

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CASE NO. C.A. 03-CV-12497

PREMIER CAPITAL, LLC,

Plaintiff,

-VS-

BEVERLY JOHNSON PENZELL, d/b/a  
Law Office of Kris E. Penzell  
and BEVERLY JOHNSON PENZELL, as  
Personal Representative of the  
Estate of Kris E. Penzell,

Defendants.

DEPOSITION OF BEVERLY PENZELL

VOLUME I

Tuesday, September 25, 2007  
9:15 a.m. - 12:15 p.m.

Courtyard Marriott Conference Room  
Miami, Florida 33156

Reported By:  
MARGARET PHILLIPS, Court Reporter  
Notary Public, State of Florida  
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## 20 ALSO PRESENT

21 Richard Gleicher, Premier Capital  
22 - - -

23 BEVERLY PENZELL

3

## 24 E X H I B I T S

25 Plaintiff's Exhibit No. 1

5

Plaintiff's Exhibit No. 2

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1           Q.     Same kind of secretarial duties you  
2 described with respect to Mr. Frost?

3           A.     But it was a bigger firm so we did  
4 different -- yes.

5           Q.     And after working for that firm, what did  
6 you do?

7           A.     I was working for my husband -- he wasn't  
8 at the time -- Kris Penzell

9           Q.     Kris Penzell?

10          A.     I worked for him at Pallet, Stern, Proby  
11 and Atkins, and he started another firm with another man.  
12 It was two separate firms and I was secretary for them.

13          Q.     When did Mr. Penzell start his own firm?

14          A.     I don't know -- somewhere when we both  
15 left, in the seventies, mid-seventies.

16          Q.     And so you worked for, if I understand this  
17 correctly, your late husband who was in practice with  
18 another attorney?

19          A.     He had his own firm, Law Offices of Kris E.  
20 Penzell, PA, and the other gentleman had his own PA, and  
21 I was secretary for both of them.

22          Q.     Again, same sort of secretarial duties?

23          A.     Yes.

24          Q.     How long did you work for the Law Offices  
25 of Kris E. Penzell?

1 here. It was a long time ago.

2 Q. So his practice took different forms over  
3 time?

4 A. Yes.

5 Q. Did your ---

6 A. Yes, and at some point in there we became  
7 married. In 1980 we got married and when I got pregnant  
8 in 1982 I stepped out of the office on a full-time basis.

9 Q. Did you resume work at some point for  
10 Mr. Penzell?

11 A. I went to school then.

12 Q. In the junior college and then Florida  
13 International at that point?

14 A. Yes, sir.

15 Q. During the period from when you began to  
16 work for Mr. Penzell to the period that you began --  
17 until your pregnancy, what sort of work did you do for  
18 him?

19 A. I thought we covered that. I was his  
20 secretary.

21 Q. When you went to school, did you do so  
22 full-time?

23 A. Well, I had a daughter and I did volunteer  
24 work and I was in school maybe a full load but I wasn't  
25 full-time. It wasn't the only thing I did, no. I was

1 writing a cookbook also.

2 Q. At some point did you resume working for  
3 Mr. Penzell?

4 A. I can't remember. I mean maybe.

5 Q. You are not sure?

6 A. I was always, you know, had some hand in  
7 the, you know, some issues. Now I don't know -- it is  
8 very muddled for me right now.

9 Q. What kinds of issues?

10 A. Personnel issues, closed files, how long do  
11 you have to keep them. It is unclear, the law in  
12 Florida, and I could never get a straight answer. If you  
13 have a hurricane what are you going to do if you have to  
14 find a new location. You know, the basic problems that  
15 would come up in somebody who owns a business.

16 Q. With respect to the issue of closed files  
17 under Florida law, what did you do?

18 A. I tried to get an answer of how long we had  
19 to keep things.

20 Q. How did you do that?

21 A. I asked him.

22 Q. "Him" being?

23 A. My husband.

24 Q. How did that issue come up?

25 A. Well, because the girls were running out of

1 the entire file.

2 **Q. What was the nature of your husband's**  
3 **practice?**

4 A. My husband was basically -- you know, he  
5 was in business a long time so it changed.

6 **Q. How about at the beginning?**

7 A. He mostly did collection work. He did  
8 banking work, loan closings, collection work. He did  
9 business. He helped businesses and business law. He did  
10 some divorce work for a while and for a very short period  
11 of time family court work. I can't remember what else.

12 **Q. Would that describe the nature of his**  
13 **practice at the time you started working for him?**

14 A. At the time I started working for him I was  
15 at Pallet, Stern, Proby and Atkins and we did loan  
16 closings, yes.

17 **Q. Did the nature of Mr. Penzell's practice**  
18 **change over time?**

19 A. Over 30-some years, yes, sir, it did.

20 **Q. How did it change?**

21 A. It just depended on what was happening in  
22 life at that time. I don't know what you mean.

23 **Q. Well, did he do certain kinds of work to a**  
24 **greater degree or ---**

25 A. He did some real estate.

1 A. Yes, sir, he has.

2 Q. When was that?

3 A. It was March 8th of 2000.

4 Q. Was he working as a lawyer until the time  
5 of his death?

6 A. Yes, sir, he was.

7 Q. During the period prior to his death, say  
8 the year prior to his death, were you working for him at  
9 that point in time?

10 A. Was I working for him at the time?

11 Q. During that year prior to his death.

12 A. No.

13 Q. Were you engaged in any full-time  
14 employment at that point?

15 A. The year before he passed?

16 Q. Right, during that time frame.

17 A. I was pretty much involved with a personal  
18 family matter for my father, very much full-time for the  
19 last couple of years prior to his passing.

20 Q. Did you have involvement with Mr. Penzell's  
21 practice following his death?

22 A. As personal representative, yes, sir, I had  
23 to go in.

24 Q. What's your understanding of your status as  
25 personal representative? What is that?

1 MR. CORRIGAN: Objection, form.

2 You can answer if you understand.

3 THE WITNESS: Pardon?

4 MR. CORRIGAN: If you understand his  
5 question you can answer it. If you don't, ask  
6 him --

7 A. Could you repeat the question?

8 Q. When did you become personal  
9 representative?

10 A. Why?

11 Q. When?

12 A. I don't know the legal logistics of what  
13 you mean by that. My husband passed, he had a will, I  
14 was his personal representative. I don't know if there  
15 is some period of time if the Court has to appoint me or  
16 approve it or not. I don't really know.

17 Q. Do you know when you began acting in your  
18 capacity as personal representative?

19 A. The day after his funeral, a couple of days  
20 after, the day after I believe.

21 Q. Generally, what sort of activity did you  
22 engage in as personal representative?

23 A. Well, I met with his secretary and family  
24 member of mine and we, you know, assessed the situation.  
25 He had hearings that needed to be attended and those were



1           A.     407 Lincoln Road, Miami Beach, Florida,  
2     33139.

3           Q.     Was that -- did that office remain the  
4     office of the Penzell law firm following your husband's  
5     death?

6           A.     Yes, sir, it did.

7           Q.     For how long?

8           A.     I don't know.

9           Q.     Following your husband's -- strike that.  
10           Upon becoming involved within a week after  
11     your husband's death, what, to your understanding, did  
12     Mr. Roness do?

13          A.     I don't know.

14          Q.     He began working in connection with the  
15     Penzell law firm at that time?

16          A.     I don't know.

17          Q.     I thought you testified that he became  
18     involved with the firm within a week after your husband's  
19     death?

20          A.     Well, there is a calendar, my husband's  
21     calendar, that he would have been doing. Somebody had to  
22     go to those appointments maybe or those hearings. I  
23     really -- I am sorry, I don't know.

24          Q.     Are those the kinds of things that he did  
25     at that time?

1 MR. CORRIGAN: Objection, form.

2 A. Yes.

3 MR. CORRIGAN: If you know, answer the  
4 question. If you don't know say you don't know.  
5 Those are appropriate questions for Mr. Ronces.

6 A. I don't know.

7 Q. In the period after your husband's death  
8 what's been your involvement with the Penzell law firm?

9 A. Well, as personal representative of his  
10 estate I, you know, I had to make calls to people. I had  
11 to learn about things that I, you know, hadn't had a hand  
12 in in a very long time.

13 Q. What kinds of things?

14 A. Well, like his malpractice insurance  
15 coverage.

16 Q. Anything else?

17 A. I mean, everything that would have to do  
18 with an office and it was seven years ago. I don't  
19 really remember all the things.

20 Q. Did you spend time at the office?

21 A. Yes, I did.

22 Q. Can you give me a general idea of what your  
23 day-to-day attendance at the office was over this period  
24 of time?

25 A. Well, you know, an inventory attorney, you

1 It's a record.

2 MR. MORRISSEY: She hasn't identified it  
3 though.

4 MR. CORRIGAN: She can identify it by how  
5 it's previously marked. This is helping out in  
6 the record. If you want to later mark it as  
7 something else, you can do so.

8 MR. MORRISSEY: OK. I'm sorry. I  
9 misunderstood you.

10 BY MR. MORRISSEY:

11 Q. Is that, in fact, the agreement that is  
12 referenced in the affidavit?

13 A. It certainly looks like it.

14 Q. OK. Turning your attention to paragraph 13  
15 of the -- strike that.

16 I wonder if we could have the -- turning  
17 your attention to paragraph 13, ma'am.

18 MR. SUSSMAN: Of Exhibit 2?

19 Q. Of Exhibit 2, correct, the first sentence  
20 refers to work done by the Penzell law firm for Barnett  
21 Bank?

22 A. Yes, sir.

23 Q. Did you have any involvement yourself with  
24 that work?

25 A. Pardon?

1 Q. Did you have any involvement with Barnett  
2 Bank at all?

3 A. Absolutely.

4 Q. What type of involvement did you have?

5 A. I was the secretary for my husband when he  
6 represented Barnett Bank.

7 Q. Third sentence of paragraph 13 states that,  
8 "Barnett Bank thereafter merged with NationsBank, NA, a  
9 banking chartered in Charlotte, North Carolina."

10 A. Yes, sir.

11 Q. Did you have a like involvement with  
12 NationsBank as part of your work for your husband?

13 MR. CORRIGAN: Objection, form.

14 A. No, it was less, but I had involvement.

15 Q. Did Mr. Penzell represent NationsBank?

16 A. Yes, sir. He did.

17 Q. What kinds of matters?

18 A. As far as I know, collection work.

19 Q. Going on to paragraph 14 of the affidavit.

20 A. Uh-huh.

21 Q. It states, "Subsequent to the agreement  
22 between NationsBank and the Law Office of Kris E.  
23 Penzell, PA, the assets of NationsBank, including the  
24 collection accounts, were sold to Bank of America, the  
25 banking association chartered in Charlotte, North

1 **Carolina."**

2 **What collection accounts are being referred**  
3 **to in that paragraph?**

4 A. Subsequent to the agreement between  
5 NationsBank and the Law Offices of Kris Penzell, the  
6 assets of NationsBank were sold to Bank of America. OK.  
7 It would be the collection accounts that my husband  
8 worked on.

9 **Q. What kinds of collection accounts?**

10 A. Drawers and drawers and drawers of files.

11 **Q. Did they include judgments?**

12 A. Yes, sir.

13 **Q. How did you become aware of the transaction**  
14 **involving NationsBank and Bank of America referred to in**  
15 **this part of your affidavit?**

16 A. I am sorry, which part?

17 **Q. How did you become aware of the**  
18 **transactions referred to in paragraph 14 involving**  
19 **NationsBank and Bank of America?**

20 A. Well, I told you in 1999 I heard over the  
21 news that Bank of America was buying NationsBank.

22 **Q. Do you recall discussing that with**  
23 **Mr. Penzell at any point in time?**

24 A. Sure, we were on holiday somewhere. It was  
25 pretty big news.

1 Q. Did the nature of Mr. Penzell's work on the  
2 collection accounts change after the transaction  
3 involving NationsBank and Bank of America?

4 MR. CORRIGAN: Objection, form.

5 You can answer if you understand.

6 A. Could you repeat the question?

7 Q. Did the nature of Mr. Penzell's work on the  
8 collection accounts change after Bank of America entered  
9 into the transaction with NationsBank?

10 A. Did the nature of his work change?

11 Q. Yes.

12 A. I don't understand what you mean by that.

13 Q. Was he doing the same work subsequent to  
14 the transaction referenced?

15 A. You mean did he go to hearings the same  
16 way? I don't understand what you mean.

17 Q. That's what I mean. Did his work on the  
18 collection accounts change in any way after the  
19 transaction?

20 A. Sir, I don't know. My assumption is he did  
21 the same thing.

22 Q. I don't want you to assume that.

23 A. Well, I ---

24 MR. CORRIGAN: You answered the question.

25 A. I don't know.

1 Q. Attached as the only exhibit to this  
2 affidavit, as Exhibit A to the affidavit, is the  
3 contingency fee agreement you have before you that was  
4 marked at the depositions yesterday.

5 A. Uh-huh.

6 Q. Following the transaction involving  
7 NationsBank and Bank of America, did the Penzell law firm  
8 enter into any agreement involving the collection  
9 accounts directly with Bank of America?

10 A. I am sorry. Say that again.

11 Q. After Bank of America entered into the  
12 transaction with NationsBank that you describe in your  
13 affidavit in paragraph 14, did the Penzell law firm enter  
14 into any written agreement regarding the collection  
15 accounts with Bank of America?

16 A. I have -- yes. There was an agreement, it  
17 was dated in 1999 that I had not really known about, and  
18 it was ratifying files, old Barnett cases, that  
19 Mr. Penzell was to continue working.

20 Q. When you say you hadn't really known about  
21 it, what do you mean?

22 A. Well, I really wasn't aware of it.

23 Q. At what point in time?

24 A. I don't know. Throughout, ever. It was  
25 just sort of, you know, I knew there was a list of files



1 but I didn't really know what it was for. I just knew  
2 that, you know, these were files that were to be worked  
3 on and these others were not, and whatever conditions are  
4 on them but I just knew that there was some and then ---

5 Q. You were just describing the nature of this  
6 1999 agreement. Is that right?

7 A. Right.

8 Q. It is obviously in writing?

9 A. Yes. This is an exhibit and the other page  
10 was an exhibit and it is a list of files.

11 Q. Were you aware of this agreement from 1999  
12 at the time you executed this affidavit?

13 A. No.

14 Q. You were not?

15 A. (Indicating).

16 Q. When did you first become aware of it?

17 A. I don't remember. I don't really remember  
18 but it was somewhat recently.

19 Q. I beg your pardon?

20 A. It was somewhat more recent.

21 Q. How recent?

22 A. Last couple of years, year and a half or  
23 so, a year.

24 Q. In connection with the litigation that we  
25 are involved in today?



1 mentioned in 14, but 14 could be more accounts  
2 than are described in 15. You said are they the  
3 same, she said they were included in. There could  
4 be more in 14 than 15.

5 MR. CORRIGAN: It is not the same universe,  
6 that is what she is getting at.

7 MR. MORRISSEY: I am happy to get that  
8 testimony. That's all I'm after.

9 MR. CORRIGAN: I know. We all have the  
10 same record that we are making longer right now.

11 (Discussion off the record)

12 **Q. Do you adopt Mr. Sussman's**  
13 **characterization?**

14 A. Sir, I mean ---

15 MR. CORRIGAN: Objection, form. That was  
16 her testimony but go ahead.

17 A. I will repeat my answer, I liked my answer,  
18 I read it and thought about it and I believe that that's  
19 it.

20 Now if you are talking about paragraph 13,  
21 you know ---

22 MR. CORRIGAN: Beverly, you answered his  
23 question. Wait for a question.

24 **Q. When Barnett Bank entered into a**  
25 **transaction, at some point Barnett Bank entered into a**

1 transaction with NationsBank that had -- that involved  
2 matters that the Penzell law firm was working on. Is  
3 that right?

4 A. Yes.

5 Q. After that transaction, the Penzell law  
6 firm continued to work on those matters for at that point  
7 NationsBank. Right?

8 A. Yes. My husband worked on those Barnett  
9 files that were now owned by NationsBank.

10 Q. And an agreement was entered into in 1998  
11 between the Penzell law firm and NationsBank?

12 A. Right.

13 Q. And then as you state in your affidavit,  
14 the NationsBank assets were sold to Bank of America.  
15 Right?

16 A. OK. NationsBank assets included more than  
17 just Barnett Bank cases because I think there was a  
18 period of time, quite a large period of time, that  
19 NationsBank was a really big bank and they owned a lot of  
20 other things and not just the Barnett matters.

21 Q. To your understanding how did that  
22 transaction --

23 A. I have ---

24 Q. -- differ from the transaction between Bank  
25 of America and Premier that you reference in

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DEPOSITION OF BEVERLY PENZELL

VOLUME II

Tuesday, September 25, 2007  
1:15 p.m. - 5:30 p.m.

9155 S. Dadeland Blvd., Suite 1014  
Miami, Florida 33156

Reported By:  
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19 617-973-4800

20 ALSO PRESENT

21 Richard Gleicher, Premier Capital  
22  
23  
24  
25

- - -

1 A. At what time?

2 Q. October of 2001 subsequent to the phone  
3 call that you testified about.

4 A. After the phone call?

5 Q. Yes.

6 A. The owner of that file, the owner of the  
7 debt owed my husband the fees, whoever the owner is.

8 Q. Prior to that phone call with Bank of  
9 America relating to the Bank of America/Premier  
10 transaction, did you have an understanding that the  
11 Penzell Law Firm was owed money for work done by your  
12 late husband?

13 A. My husband was always due for work that he  
14 did on the file, yes.

15 Q. And did Bank of America owe him money at  
16 that time?

17 A. Bank of America owed my husband for work  
18 that was done, legal services on the files that he  
19 performed.

20 Q. Again, sticking with the period prior to  
21 your learning of the Bank of America to Premier  
22 conveyance, apart from Bank of America, were there any  
23 other entities that you believed owed the Penzell Law  
24 Firm money for services provided by your husband?

25 A. I'm sorry, the owner of a file that my

1 husband performed legal services for owed my husband  
2 fees.

3 Q. And if I understand your testimony, prior  
4 to the October 2001 phone call with Bank of America  
5 relative to the Bank of America/Premier transaction, that  
6 entity was Bank of America. Right?

7 MR. CORRIGAN: Objection to form.

8 You can answer.

9 A. I am going to repeat, Bank of America,  
10 NationsBank and Barnett Bank to me are all the same, you  
11 know.

12 Q. Prior again to that October 2001 phone  
13 call, did anyone at the Penzell Law Firm make demand on  
14 any entity for money that you believe was owed?

15 A. I think that is way too big of a universe  
16 of a question for me to be specific about.

17 Q. How can I be more specific for you?

18 A. Maybe if you would repeat the question.

19 Q. OK. Sticking with this period prior to  
20 your learning of the Bank of America/Premier transaction  
21 as referenced in your affidavit, sticking with this  
22 period you have testified that ---

23 A. Sticking with which period?

24 Q. Prior to that phone call.

25 A. Prior to being told that Premier's files

1 were sold or any? We are talking about Premier Capital,  
2 LLC files. I am trying to figure it out.

3 MR. SUSSMAN: Your job is to answer  
4 questions.

5 A. Sticking with the time period, I don't  
6 understand what you mean.

7 Q. Let's come at this in a slightly different  
8 way. Again, prior to the break we were all making a  
9 collective effort to focus on the collection accounts  
10 that Premier acquired from Bank of America, not to any  
11 other Bank of America accounts --

12 A. OK.

13 Q. -- in which Premier had no involvement.

14 A. I understand.

15 Q. We are speaking strictly of the collection  
16 matters conveyed by the bank to Premier.

17 A. I understand.

18 Q. And prior to that advance your testimony is  
19 that the Penzell Law Firm was representing the bank, Bank  
20 of America on those matters. Is that right?

21 A. Yes.

22 Q. As well as predecessors of Bank of America.  
23 Is that right?

24 A. Uh-huh, yes.

25 Q. So those are the matters I am addressing,

1 simply those collection matters.

2 A. All right.

3 Q. If you had any belief or claim as to other  
4 matters I'm not interested and obviously that's not what  
5 we are not here to talk about.

6 A. That is good.

7 Q. So addressing only those matters, prior to  
8 the telephone call that you testified about in October  
9 of 2001, you had an understanding, did you not, that Bank  
10 of America owed the Penzell Law Firm money -- is that  
11 right?

12 A. Yes, sir.

13 Q. -- with respect to those matters --

14 A. Yes, sir.

15 Q. -- conveyed to Premier?

16 A. Uh-huh.

17 Q. And is it your testimony that certain of  
18 Bank of America's predecessors also owed money at some  
19 point in time for legal services performed by your  
20 husband as to those accounts?

21 A. Yes.

22 Q. And which entities would those be?

23 A. Well, sir, if a file came in when it was  
24 Barnett Bank and while Barnett Bank still owned those  
25 files, Barnett Bank owed my husband fees.



1 Q. I think that is what I am looking for.

2 MR. CORRIGAN: Are you finished?

3 MR. SUSSMAN: Yes.

4 Q. To your knowledge, again up to the time of  
5 that phone call in October of 2001, did anyone from the  
6 Penzell Law Firm make a demand on any of these entities,  
7 Bank of America, NationsBank, Barnett Bank for monies  
8 claimed to be owed to the Penzell Law Firm for  
9 Mr. Penzell's services on these accounts, on the accounts  
10 ultimately conveyed to Premier?

11 A. Not to my knowledge.

12 MR. SUSSMAN: Excuse us one minute.

13 (Short break)

14 BY MR. MORRISSEY:

15 Q. So you had a belief prior to October  
16 of 2001 that money was owed on these accounts ultimately  
17 conveyed to Premier. Right?

18 A. Yes, sir. My husband was owed for his  
19 legal services he performed on that file, yes.

20 Q. When did you initially form that  
21 understanding?

22 A. From the time he first opened his office.  
23 If he does work on a file, a client owes him fees.

24 Q. So was there money owed again on these --  
25 well, to the extent that your answer deviated from what I

1 want to make sure we are talking about, which is the  
2 accounts conveyed by the bank to Premier, that's all we  
3 are talking about now. I understand that in general your  
4 husband may have been owed money on other files. We are  
5 not concerned obviously with that, but, again, my  
6 question specifically has to do with the accounts  
7 conveyed by the bank to Premier.

8 A. Yes, my husband was owed fees on those  
9 files.

10 Q. On those files?

11 A. Yes.

12 MR. SUSSMAN: Can you wait until he asks  
13 you a question?

14 THE WITNESS: I am so sorry.

15 Q. When did you form the understanding that  
16 money was owed on those accounts?

17 A. At all times.

18 Q. What times are we talking about?

19 A. From the time he first did anything on  
20 those files.

21 Q. From that time money was owed?

22 MR. SUSSMAN: Yes or no.

23 A. Yes.

24 Q. At some point in time, and this includes  
25 any time up to the present time, did you work on a

1 MR. SUSSMAN: Excuse me. Could I interject  
2 something?

3 MR. MORRISSEY: Sure.

4 MR. SUSSMAN: I think what he is asking you  
5 is have your beliefs changed since you signed the  
6 answers to interrogatories.

7 THE WITNESS: No.

8 MR. MORRISSEY: Thank you. Moving to the  
9 next numbered exhibit.

10 **Q. Could you identify that for the record,**  
11 **please?**

12 A. Settlement agreement and general release.

13 MR. MORRISSEY: I have to tell you I don't  
14 think I have seen that before. If I have I stand  
15 corrected if you produced it to them.

16 MR. CORRIGAN: I think Steve might have  
17 produced it. I know I got it from him, I think.

18 MR. MORRISSEY: I know this copy doesn't  
19 bear a Bates stamped number which is not  
20 necessarily significant, but I don't recall ever  
21 having seen it before.

22 (Discussion off the record)

23 MR. CORRIGAN: Let's go on the record now  
24 because we are discussing a 1999 agreement between  
25 the Law Offices of Kris Penzell and Bank of

1 America which adopts the 1998 agreement. I  
2 believe Victor Rones talked about this agreement  
3 in his testimony yesterday. I know we raised it  
4 on the record. I know we offered to make a copy  
5 available for the purposes of having the witnesses  
6 questioned on the issue.

7 That opportunity wasn't acknowledged or  
8 taken by counsel for Premier. I don't think it  
9 changes legally anything relative to Premier's  
10 relationship to the Law Offices of Kris Penzell.

11 That aside, here it is. Feel free to ask  
12 Ms. Penzell anything you'd like about it.

13 MR. MORRISSEY: Well, I am happy to have  
14 the opportunity to question Ms. Penzell about the  
15 document. To the extent that I have been  
16 prejudiced in my ability to prepare for her  
17 examination by virtue of the failure to produce  
18 the document, apparently, the document having  
19 originated with counsel for Ms. Penzell, I  
20 certainly object to that and reserve any and all  
21 rights I may have with respect to that failure to  
22 produce.

23 With respect to the impact that the failure  
24 to produce the document may have, it really  
25 depends upon its materiality as established by

1 Ms. Penzell in her answers. If it is a mere  
2 bagatelle that has no relevance to any issues in  
3 the case, then no harm, no foul.

4 If it is a document that purports to affect  
5 the rights and liabilities of my client I am very  
6 much going to object to its late production and  
7 reserve any and all rights and remedies I may have  
8 with respect to it.

9 MR. CORRIGAN: We are not crossing the  
10 Rubicon here. This is a legal document to which  
11 your client was not a party. It either existed or  
12 didn't exist. The witnesses who testified  
13 yesterday acknowledged its existence. It was  
14 offered to you yesterday. You didn't take the  
15 opportunity to ask questions about it.

16 To the extent you have been prejudiced it  
17 was at your own risk and I will insist that those  
18 witnesses yesterday could offer no further insight  
19 to this agreement, since they were not parties to  
20 it.

21 So to the extent you want to ask questions  
22 about the law office's involvement to that  
23 agreement you have the appropriate witness. All  
24 the other witnesses are no longer with us.  
25

1 BY MR. MORRISSEY:

2 Q. Have you seen this document before,  
3 Ms. Penzell?

4 A. Yes, sir. I have.

5 Q. With apologies if I just asked this  
6 question, when did you first see it?

7 A. I don't remember. Probably close to that  
8 date on the top of there, August of '06.

9 Q. OK. And what date are you referring to,  
10 ma'am?

11 A. The fax identification, August 3rd, 2006.  
12 I mean, I have seen the exhibit before.

13 Q. What exhibit are you referring to?

14 A. Exhibit B to the agreement.

15 Q. Just to be clear for the record, ma'am, is  
16 that ---

17 A. Exhibit B is a list of files with my  
18 husband's initials at the bottom.

19 Q. Is that, in fact, the penultimate, the next  
20 to last page of the document?

21 A. The whom?

22 Q. Is that the next to the last page of the  
23 exhibit?

24 A. Yes, it is.

25 Q. By the way, there are signatures on the

1 **final page?**

2 A. Yes.

3 **Q. Whose signatures, if you can tell?**

4 A. Cynthia Fisher from Bank of America.

5 **Q. And is there another signature there?**

6 A. These are notary signatures. Cynthia  
7 Fisher was a notary and Denise Chardiet is another  
8 notary.

9 **Q. With apologies for looking over your**  
10 **shoulder because it is the only copy.**

11 **How about on the third to the last page, is**  
12 **there another signature there?**

13 A. It was signed by Steven Mayo of  
14 NationsBank.

15 **Q. Anyone else?**

16 A. And my husband, Kris E. Penzell.

17 **Q. Was this a document that you encountered in**  
18 **your files in 2006?**

19 A. Yes.

20 **Q. At that time, did you produce it to your**  
21 **counsel?**

22 A. Yes.

23 **Q. Do you recall the circumstances under which**  
24 **you found that?**

25 A. Not exactly.



1           A.     No. This is the Arroyave file and that  
2     Arroyave file came in after the agreement.

3           Q.     What's the basis of your understanding  
4     there. When you say came in, what do you mean?

5           A.     The bank referred the Arroyave file, along  
6     with many others that Premier bought, referred to my  
7     husband to collect files that are not on this list that  
8     he is due fees on because they came after this.

9           Q.     Which bank?

10          A.     Well, if it says NationsBank it would have  
11     been NationsBank, which is generally the case.

12          Q.     Do you have an understanding which bank it  
13     was in the case of Arroyave?

14          A.     My understanding is it was NationsBank. I  
15     don't have the file in front of me or anything, but my  
16     understanding is it is NationsBank. I don't know ---

17          Q.     Is that matter referenced in Exhibit B?

18          A.     No. It is not on there.

19                 MR. SUSSMAN: Which one?

20                 THE WITNESS: Arroyave.

21                 MR. CORRIGAN: What number is that?

22                 THE WITNESS: We were referring to Rones  
23     Exhibit 4.

24     BY MR. MORRISSEY:

25          Q.     Do you have an understanding, ma'am,



1 **whether Exhibit 4, the settlement agreement release,**  
2 **relates in any way to Premier Capital, LLC?**

3 MR. CORRIGAN: Objection to form.

4 A. I am not a lawyer so I don't know, but my  
5 understanding is that the fee agreement, contingency fee  
6 agreement, is the operating agreement under which my  
7 husband was owed fees and to the extent that Exhibit B  
8 includes some of those files, you know, it really was to  
9 secure his fees on these files.

10 Q. I think you have testified that the 1998  
11 contingency fee agreement ---

12 A. Was the operating agreement, yes.

13 Q. And I believe your testimony was that that  
14 was in part -- that forms in part the basis for your  
15 counter-claim. Is that right?

16 A. In part.

17 Q. Does the settlement agreement in general  
18 release Exhibit 4 relate in any way to your  
19 counter-claim?

20 A. I mean, I'm not the lawyer but I don't  
21 think this has anything to do, you know, with you. This  
22 had to do with other than -- files other than these  
23 (indicating).

24 Q. And you are obviously referring to Premier?

25 A. Yes, Premier Capital.

1 **conversation?**

2 A. Yes. I told him that I knew that as owner  
3 of the files his company owed my husband fees as I had  
4 been advised by everybody, including the bank.

5 Q. Which bank advised you that you were owed  
6 fees?

7 A. Which bank? The only bank we are talking  
8 about.

9 Q. Which is Barnett, NationsBank, Bank of  
10 America?

11 A. Barnett wasn't in existence in 2001, sir.  
12 I am not sure if it was NationsBank or Bank of America.  
13 I told you I don't know when they were what, but it was  
14 that bank, yes.

15 Q. What did Mr. Maimonis say to you?

16 A. It was a long time ago, but he was calling  
17 about information on the files and I told him that, you  
18 know, if he wanted to hire the inventory attorney he  
19 could do that, fully prepared, as I had been advised by  
20 Victor, to step in the shoes and continue the file and  
21 protect Kris's fees, to see the file to fruition, if the  
22 client wanted. And now Premier Capital was the client  
23 and I knew Victor was not going to do one moment of  
24 anything on a file that he didn't have authority to work  
25 on. I mean, that was huge.

1           Q.     Just so I understand this, ma'am, you were  
2 communicating to Mr. Maimonis about work, if any, on the  
3 Premier files followed a conversation you had with Mr.  
4 Rones. Is that right?

5           MR. CORRIGAN: Objection, form.

6           You can answer if you understand.

7           A.     I -- yes. I had conversations with Mr.  
8 Rones that if a file was being sold he wasn't going to  
9 work the file anymore.

10          Q.     Anything else that you can recall having  
11 been discussed by either yourself or Mr. Maimonis in this  
12 conversation?

13          A.     I told him -- I'm not sure if it was that  
14 conversation or one soon after -- that the fees were  
15 30 percent.

16          Q.     And by fee, do you mean contingency fee?

17          A.     Contingency fees, yes.

18          Q.     That 30 percent would apply in the event  
19 Premier engaged the Penzell Law Firm?

20          A.     That was if any collection occurred on  
21 those files that my husband -- it was a liability that  
22 owed him 30 percent on whatever money was collected on  
23 those files.

24          Q.     What was the basis of that position?

25          A.     The basis of what?

1           **Q.       That position by you that if any collection**  
2 **occurred.**

3           A.       It was very common knowledge of how things  
4 worked in my husband's office when he was alive and  
5 after. Nothing changed.

6           **Q.       Was there ---**

7           A.       And this fee agreement that we are talking  
8 about, the 1999 fee agreement, is the one that I was told  
9 by Bank of America after my husband passed was the  
10 operative agreement and that's the agreement I knew  
11 about, the agreement I saw. It is the agreement I knew  
12 the lawyers were looking at. This is the agreement that  
13 operated on all his files.

14                   MR. CORRIGAN: You meant the 1998  
15 agreement?

16                   THE WITNESS: The 1998 agreement.

17                   MR. CORRIGAN: The '98 agreement?

18                   THE WITNESS: The 1998, December 23, 1998,  
19 Noe 2, Rones 3 exhibit.

20                   MR. CORRIGAN: You said '99 agreement.

21                   THE WITNESS: I am so sorry. Thank you for  
22 that. The 1998 agreement. I don't want to  
23 confuse matters. It is very clear for me.

24 BY MR. MORRISSEY:

25           **Q.       And was your message to Mr. Maimonis in**

1 this conversation that that 30 percent would apply to any  
2 subsequent recovery on the files at any point in time  
3 after your call with him?

4 A. Yes.

5 Q. So this would apply prospectively, was your  
6 understanding, right, that 30 percent would apply to  
7 future recoveries, if any?

8 A. Yes.

9 Q. And I believe -- anything else that you can  
10 recall from that initial call?

11 A. The initial phone call?

12 Q. Yes.

13 A. I don't think I recall anything more.

14 Q. And I believe you stated that there was in  
15 fairly short order another phone call?

16 A. There were a lot of phone calls from Nick  
17 Maimonis.

18 Q. Let's stick with the period, to use your  
19 framework, in late 2001, the last quarter of 2001 was  
20 that call that you just testified about.

21 A. Uh-huh.

22 Q. Were there other phone calls?

23 A. There could have been one or two, probably  
24 a couple more phone calls probably, you know, maybe  
25 around five, if I had to guess. I don't know if there is

1           Q.     Was there such discussion of an agreement  
2     in connection with such possible work?

3           A.     It would have to be a new fee agreement  
4     with the lawyer with the new client.

5           Q.     Did you convey that to him in those calls?

6           A.     Yes, you know ---

7           MR. CORRIGAN: You have answered the  
8     question.

9           Q.     How did he respond, if he did, to that?

10          A.     At that period of time he was receptive and  
11     he seemed like he was, you know, cooperative about it,  
12     was reasonable.

13          Q.     During that initial -- during the final  
14     months of 2001, after that October 2001 phone call --

15          A.     October 2001, uh-huh.

16          Q.     -- when you went to the B of A/Premier  
17     transaction, what was your understanding about the state  
18     of those accounts that had been sent from B of A to  
19     Premier? Was the Penzell Law Firm working on those  
20     accounts at that time?

21          A.     Well, when the bank would tell us that they  
22     were going to no asset a file, then we put it aside  
23     because we knew it was going to be sold, you know.

24          Q.     But at that point no bank was involved,  
25     again focusing on that October to end of 2001 time frame.

1 A. Well, sure.

2 Q. What was the gist of what he was telling  
3 you?

4 A. I remember particularly that he called me  
5 on January 11th, 2002 and he said, "Could you fax me the  
6 Arroyave judgments and the fee agreement?"

7 So I went to Denise and I said, "There are  
8 two judgments on Arroyave?" I mean, I didn't know that.  
9 I knew of one of them. So she pulled them out and in  
10 10 minutes I faxed it to him, the fee agreement, this  
11 1998 fee agreement.

12 Q. That was the agreement you faxed him?

13 A. Two Noe and 3 Rones, right, and the two  
14 judgments on Arroyave.

15 Q. Did he say why he needed those materials?

16 A. He was really kind of -- he must have  
17 called me before that because he called and said send me  
18 those and I said OK and I went and got them and sent them  
19 to him, faxed it to him.

20 Q. Any other discussion at that point in time  
21 on January 11th, 2002 about Arroyave or was that the gist  
22 of it?

23 A. That was really the gist of it.

24 Q. And you, in fact, sent those documents to  
25 him?



1 files, whether the whereabouts of somebody or I don't  
2 remember what else. He was calling about the files, and  
3 Denise had more information about them than I did in her  
4 memory bank. She had worked them for Kris.

5 And every once in a while I'd mention to  
6 him, you know, what about the fee agreement? You need to  
7 get that down here for the inventory attorney and, you  
8 know, it would always be like a promise, but in that  
9 period of time he was calling more for information about  
10 the files.

11 (Discussion off the record)

12 BY MR. MORRISSEY:

13 Q. Apart from calling with questions about  
14 specific files, did Mr. Maimonis discuss anything else in  
15 his conversations with you at that time?

16 A. He said that Premier Capital didn't have  
17 counsel down here, so if the inventory attorneys were  
18 interested in working with Premier on other matters he'd  
19 be interested in hiring them for that.

20 Q. How did you respond to that?

21 A. I said, well, you know, sure, it is up to  
22 the attorney, really. I mean, they'd have to come to an  
23 agreement but they were open to doing that. I knew they  
24 were.

25 Q. Did you -- to your knowledge did Mr.



1 **Maimonis in this time frame of early 2002 discuss such**  
2 **representation directly with Mr. Rones?**

3 MR. CORRIGAN: Objection, form.

4 A. I wasn't a party to a conversation like  
5 that but I, you know, I understood that, you know, to be  
6 the case because he was interested in getting the files  
7 moving, it seemed.

8 **Q. Anything else come up in these discussions**  
9 **in early 2002 with Mr. Maimonis?**

10 A. I don't remember anything more.

11 **Q. Did you raise any issue with him?**

12 A. The issue I raised was that he owed my  
13 husband fees and if he wanted -- he kept wanting -- he  
14 wanted the file, he wanted the whole file, and I had been  
15 advised by a lot of different attorneys, not just the  
16 inventory attorney and the probate attorney. I have a  
17 lot of friends that are attorneys and I said this is what  
18 is going on with me and these people want the file back  
19 and I am told I can't give it back because there is a  
20 retaining lien. I don't know anything about this and  
21 they all agreed so I was in this dilemma.

22 **Q. Did you convey that to Mr. Maimonis?**

23 A. Yes. There is a retaining lien. I can't  
24 give the file back. He has to agree to pay my husband  
25 the fees.

1           Q.     Did you recall using that phrase with him,  
2     retaining lien?

3           A.     I don't remember, there was a lien on the  
4     file.

5           Q.     How did he respond to your statements to  
6     him about the amount of ---

7           A.     It was everything from, you know,  
8     complacent to, you know, trying to make a new deal, you  
9     know, trying to bring it down to 25 percent was an  
10    initial, which was fine, I knew it was fine with the  
11    attorneys, they would have done that. I had heard that  
12    already and, you know, that he said he was going to have  
13    to go back to the owners and see what he could do.

14                And I even said, you know, "Do you want to  
15    take a copy of the file and agree to pay something to my  
16    husband's firm?" I felt like that was my responsibility  
17    as personal representative and it was within my purview  
18    to be able to do that. I said, agree to something, and  
19    you know, he had to go back to find out what he could do,  
20    you know, trying to make a deal.

21           Q.     If I understand your testimony correctly,  
22    and, again, correct me if I am wrong, in these  
23    conversations with Mr. Maimonis, the issue of Penzell  
24    fees fall into two categories, and, again, correct me if  
25    I am wrong.

1           Q.     Let me show you what was marked as  
2 Exhibit 3 to Ms. Noe's deposition. It contains a number  
3 of pages. Take your time in looking at them.

4                     Are you familiar with that document?

5           A.     There are a lot of them. I have seen  
6 these. Yes, I have.

7                     MR. SUSSMAN: Collectively marked as one  
8 document?

9           Q.     Yes. There are a number of different  
10 documents and they were collectively marked yesterday at  
11 Ms. Noe's deposition.

12          A.     Yes.

13          Q.     Have you seen any of those documents  
14 before?

15          A.     I have seen these documents, yes.

16          Q.     Do they appear to be on a form?

17          A.     They are on a form.

18          Q.     Does that form have what appears to be a  
19 caption up at the top?

20          A.     It is Premier Capital, LLC, attorney  
21 referral form.

22          Q.     Have you seen that document before?

23          A.     I have seen these before, yes.

24          Q.     I believe it bears -- each of those forms,  
25 again, marked as an exhibit collectively, bear

1 handwriting down at the bottom, looks like a date and  
2 perhaps a set of initials.

3 A. Uh-huh.

4 Q. Whose handwriting is that, if you know?

5 A. I have no idea.

6 Q. Would it have been someone at Premier?

7 MR. CORRIGAN: Objection, form.

8 Q. Is it your handwriting?

9 A. No. That is not my handwriting.

10 MR. SUSSMAN: Are we going to mark these  
11 for this or use the old exhibit?

12 MR. CORRIGAN: That is entirely your  
13 prerogative.

14 MR. MORRISSEY: I thought we were going to  
15 use the old one.

16 MR. SUSSMAN: Is the record clear on that?

17 THE WITNESS: It says Comp. 3 Noe, LC.

18 MR. MORRISSEY: I think that's how I  
19 identified it for you.

20 MR. SUSSMAN: It is Exhibit 3 from Susan  
21 Noe's deposition, correct?

22 THE WITNESS: Yes.

23 BY MR. MORRISSEY:

24 Q. When did you first see those documents?

25 A. Well, these documents started coming in,

1 you know, at different times starting, you know, sometime  
2 in '02. Very big surprise that these would start walking  
3 in our door by mail.

4 **Q. Why was it a surprise?**

5 A. Well, because it says Beverly Penzell. I  
6 am not a lawyer. I felt like I was being set up.

7 MR. CORRIGAN: Beverly, just answer his  
8 question.

9 THE WITNESS: OK.

10 **Q. When you say you felt you were being set**  
11 **up, what do you mean?**

12 A. It's unusual that somebody would send an  
13 attorney referral form to me.

14 **Q. Do you know who sent that to you?**

15 A. Premier Capital sent it to me.

16 **Q. Do you know specifically of any person at**  
17 **Premier?**

18 A. I don't know who sent this to me, no.

19 **Q. Following -- and do you know when you**  
20 **received them?**

21 A. Well, I think they generally have a  
22 received date from them from our office, so they are  
23 different days.

24 **Q. Exactly, and I think if you look at the**  
25 **dates set forth and initials, they seem to bear the**

1           **Q.     Why did you put them in a pile by a window?**

2           A.     Because there was no attorney authorized to  
3 work a file. Until they were hired there was no work  
4 could be done on a file.

5           **Q.     Did you take any other action apart from**  
6 **putting them in a pile by the window with regard to those**  
7 **documents?**

8           A.     Susan Noe was the inventory attorney, I  
9 believe at this point in time, and I told her that these  
10 things were coming in and, you know, at that point in  
11 time she thought Maimonis was sending her an agreement to  
12 sign.

13                     So -- and we would get these threatening  
14 calls from him, you know, "You are attorney of record and  
15 you are responsible for this," and while that agreement  
16 is supposed to be coming, then, you know, obviously, she  
17 wanted to protect the estate as well and the creditor and  
18 be ready to work a file thinking it is going to be an  
19 upfront deal, legitimate, somebody was being honest about  
20 the dealings and were going to send an agreement, that  
21 she would make sure it was something she was agreed to  
22 and then be ready to work a file.

23           **Q.     Were these thoughts that Ms. Noe**  
24 **articulated to you at around the time these documents**  
25 **were received by your office?**

1 MR. CORRIGAN: Objection to form.

2 You can answer.

3 A. It was a period of a couple months this was  
4 going on. It was our understanding that Premier Capital  
5 was going to hire the inventory attorney to work these  
6 files to whatever degree they could because we knew they  
7 were already old assets, willing to perform the work to  
8 protect the fees for my husband, as was, you know, our  
9 job.

10 Q. Was it your understanding at that time that  
11 Ms. Noe had had her own contacts with Premier relative to  
12 a potential agreement between Premier and ---

13 A. I don't remember.

14 MR. CORRIGAN: Objection, form. Hang on.  
15 What period of time are we talking about?

16 MR. MORRISSEY: At or around the time the  
17 documents marked as Exhibit 3 to Ms. Noe's  
18 deposition were received by her firm.

19 MR. CORRIGAN: Hang on a second. These  
20 documents don't cover a two-month period of time.  
21 They span from April of 2002 to July 2002.

22 MR. MORRISSEY: I stand corrected.

23 MR. CORRIGAN: I don't want to talk in  
24 generalities here. The documents reflect when  
25 they were sent and when they were received so if



1 really April through July.

2 MR. MORRISSEY: That is well taken.

3 BY MR. MORRISSEY:

4 Q. So my question concerns the period these  
5 documents were received over the span of roughly  
6 four months.

7 MR. SUSSMAN: Three.

8 Q. April, May, June, July of 2002. And my  
9 question to you is during that period of time, to your  
10 understanding, did Ms. Noe have her own contacts with  
11 Premier relative to a potential agreement between the  
12 Penzell Law Firm and Premier?

13 A. Repeat the question again.

14 Q. During the four-month time frame, from  
15 April 2002 to July 2002, when those documents were  
16 received by you, by the Penzell Law Firm, during that  
17 period of time, to your understanding, was Ms. Noe as  
18 inventory attorney in touch with Premier about a  
19 potential new agreement between Premier and the Penzell  
20 Law Firm?

21 A. My recollection is that it happened more  
22 towards, you know, the earlier part of the year and that  
23 when these started coming in it was like a big surprise  
24 because there should have been an agreement already.  
25 There was one coming but instead of an agreement these



1           A.     I don't remember specifically but I am sure  
2 I, you know, looked at this and I spoke to Mr. Maimonis  
3 and said, you know, there is no new agreement so, you  
4 know, I am not a lawyer. You are referring these to me.  
5 There is nothing I can do. You could ask me to jump off  
6 a roof and I can't. I won't.

7           MR. SUSSMAN: Excuse me. Did you take any  
8 action? Did you make a phone call? Did you write  
9 a letter?

10          A.     I mean, I don't remember exactly. I know  
11 that I spoke to Maimonis about this.

12          **Q.     So you had a conversation when you received**  
13 **it?**

14          A.     Sure.

15          **Q.     What did you say in that conversation?**

16          A.     I said there needs to be a new agreement  
17 signed.

18          **Q.     Why?**

19          A.     In order for work to be done.

20          **Q.     How did he respond to that?**

21          A.     "Oh, yes, I'm going to get it down to you."

22          **Q.     So your understanding at that point, if a**  
23 **new agreement was signed what would happen?**

24          MR. CORRIGAN: Objection, form.

25          You can answer, if you know.

1 my husband, you know. But I am looking at this thing and  
2 remembering I don't know some of these names, so why is  
3 Premier sending new matters here.

4 MR. CORRIGAN: Referring to Exhibit 5.

5 A. To Exhibit 5. I never had heard of a  
6 couple of names on here.

7 Q. Did you tell Mr. Maimonis that?

8 A. I don't remember.

9 Q. Would it be fair to say ---

10 A. I don't think I did, no.

11 Q. Let me take a look at that just a second.

12 Did -- Mr. Maimonis in this letter states  
13 in part, makes reference in part to, quote, "The process  
14 of pursuing," unquote, these files by the law firm. He  
15 is asking you, is he not, to take action of some kind?  
16 Would that be a fair characterization of what he is  
17 asking you there?

18 MR. CORRIGAN: Objection, form. First of  
19 all, it is a fax, not a letter.

20 Second of all, are you asking her what he  
21 was intending when he wrote that?

22 MR. MORRISSEY: I am asking her for her  
23 understanding of what he is asking.

24 Q. Is he asking the law firm to take action of  
25 some kind?

1           A.     I am sure I did.

2           **Q.     Are you assuming that you did or do you**  
3 **recall having that?**

4           A.     Well, it is the same conversation I would  
5 have with him over all of these communications and, you  
6 know, yes.

7           **Q.     And you advised him you were not, in fact,**  
8 **pursuing these cases?**

9           A.     Yes. He needed to hire an attorney in  
10 order for work to be done.

11          **Q.     Did you respond in any other way apart from**  
12 **conveying that -- was that a verbal communication with**  
13 **Mr. Maimonis on your part?**

14          A.     You know what? I don't remember.

15          **Q.     Did you do anything else subsequent to the**  
16 **receipt of this particular document?**

17          A.     This particular document, I don't know  
18 exactly the detail. I know I told Sue we were getting  
19 these things in and they just, you know, seemed very  
20 predatory and, you know, to bring this to a head.

21          **Q.     So you were communicating with Ms. Noe**  
22 **about this as well in that time frame?**

23          A.     You know, yes.

24          **Q.     Did she direct you to take any action?**

25          A.     At some point she directed me to work with

1 Jose Tourn to, you know, do some research and see, you  
2 know, what action that, you know, he would recommend for  
3 her to take when hired.

4 Q. Do you know when that occurred?

5 A. Not exactly sure, but I think it is around  
6 this period of time.

7 Q. That was a conversation she had with you  
8 about Mr. Tourn?

9 A. Yes.

10 MR. MORRISSEY: Let me have this marked as  
11 the next exhibit.

12 (The document referred to was marked for  
13 identification as Plaintiff's Exhibit No. 8.)

14 Q. This is a one page document marked as  
15 Exhibit 8. Please take a look at it.

16 MR. CORRIGAN: OK.

17 Q. Have you seen that before, Ms. Penzell?

18 A. Yes, sir. I have.

19 Q. What, if any, response did you make to your  
20 receipt of that letter?

21 A. I believe based on paragraph three or four  
22 here, I was pretty upset.

23 Q. What are you referring to specifically?

24 A. "When we discussed continuing using your  
25 services based on a contingency fee agreement that we

1 still have no knowledge of, we agreed to do so."

2 **Q. You were upset about that?**

3 A. When -- I believe I wrote him and I may  
4 have just been starting to do e-mail a little bit at that  
5 point, I wasn't that good, I was just sort of starting  
6 it, when he says, "Based on a contingency fee agreement  
7 that we still have no knowledge of," you know, it was  
8 just so old.

9 I knew that the bank had given the  
10 agreement to Premier Capital. I knew that I had given it  
11 to Premier. I didn't remember when but I knew I had  
12 given it to them. I didn't remember what file or  
13 anything at that point, but I knew I had given it to  
14 them.

15 **Q. You are referring to the 1998 agreement?**

16 A. The contingency fee agreement is the 1998  
17 agreement, yes, sir.

18 **Q. That is what you gave to Mr. Maimonis?**

19 A. That is what I faxed to him with Arroyave,  
20 with those two judgments. I didn't remember at the  
21 moment I read this that that was the file, but I knew  
22 that I had given it to him.

23 **Q. As part of that fax?**

24 A. As part of the Arroyave fax on  
25 January 11th, yes, sir, I had given them the 1998

1 Q. Showing you what's been marked as  
2 Exhibit 12, Ms. Penzell.

3 A. Yes.

4 Q. Can you tell me if you have seen that  
5 before? Have you seen that before?

6 A. Yes, sir, I have.

7 Q. When did you see it for the first time?

8 A. Probably sometime around when it was sent,  
9 February 4, 2003, one month after I had sent a letter to  
10 Premier.

11 Q. It is a one-page document, is it not?

12 A. Yes, it is.

13 Q. On Premier Capital, LLC letterhead?

14 A. Uh-huh.

15 Q. Addressed to you from Mr. Maimonis?

16 A. Yes, yes.

17 Q. And that references a letter sent by you to  
18 him?

19 A. Yes, sir.

20 Q. And the third paragraph makes reference to  
21 -- states in part that, quote, "You," by which I take it  
22 Mr. Maimonis meant --

23 A. Meant me.

24 Q. -- you, Beverly Penzell?

25 A. Yes.

1           Q.     "Should create a retainer agreement  
2 exclusive to us negating any previous agreements,  
3 retainers that you feel you have had in the past for the  
4 above matters," end quote.

5                     Did you ever create such an agreement?

6           A.     Never, sir. I'm not a lawyer.

7           Q.     Did Ms. Noe ever create such an agreement?

8           A.     No, sir.

9           Q.     Have you generated any agreements with  
10 clients for Penzell & Associates, Inc.?

11          A.     I don't think so. I don't know.

12          Q.     Do you work with written agreements?

13          A.     I don't know to be honest with you. I  
14 don't know.

15          Q.     Do you have any written agreement with  
16 Commerce Bank?

17          A.     I don't remember.

18          Q.     Do you have any familiarity with a matter  
19 called Metropolitan Industries/James Ward?

20          A.     It is one of the files here, yes.

21          Q.     At some point in time did Ms. Noe, as  
22 inventory attorney, engage in activity on that file in  
23 2002?

24          A.     My recollection is that I was out of town  
25 and Mr. Maimonis called, was threatening with a deadline

1 and Susan made a decision to, knowing this was undecided,  
2 just to protect the file on behalf of the estate, go down  
3 one time.

4 Q. Did you have any discussions with her about  
5 that?

6 A. I was out of town.

7 Q. So when she made the decision you just  
8 referred to to attend this event, were you involved in  
9 that decision at all?

10 A. I was not.

11 Q. This was something she did on her own as  
12 inventory attorney?

13 A. She may have made that decision. Denise  
14 may have told her that Maimonis was calling and  
15 threatening again.

16 Q. Do you recall any discussions you had with  
17 Mr. Maimonis where it came up?

18 A. I think he had maybe -- I think there was  
19 some communication from him before that.

20 Q. About that matter --

21 A. About that matter.

22 Q. -- involving you?

23 A. Yes.

24 Q. Do you recall what was said in that  
25 communication?



1           A.       Something about where he was trying to get  
2       us to do some free work again and same story, we can't  
3       work without a fee agreement authority for an attorney to  
4       work a file, same.

5           Q.       Following the event that Ms. Noe attended  
6       in Ward, did you have a discussion about what occurred?

7           A.       No. I really didn't.

8           Q.       You know she attended it?

9           A.       Well, I saw it attached to some affidavit  
10      in this lawsuit, so prior to that I had not seen it.

11          Q.       Prior to the filing of this lawsuit do you  
12      have any knowledge that Ms. Noe had, in fact,  
13      attended ---

14          A.       I don't remember.

15          Q.       You have said on several occasions in  
16      describing your understanding of what Premier wanted that  
17      Mr. Maimonis for Premier wanted free work, I believe is  
18      the phrase you have used.

19          A.       Uh-huh.

20          Q.       What do you mean by free work? What was  
21      your understanding that he wanted that was free?

22          A.       Well, he didn't want to agree to pay my  
23      husband's fees and he wasn't forwarding down the fee  
24      agreement that he had been promising now for a couple of  
25      years and yet he was still calling for work, go do this,

1 (Short break)

2 Q. Ms. Penzell, have you seen Exhibit 24  
3 before?

4 A. Yes, sir.

5 Q. Could you identify it for the record?

6 A. It's a June 4th letter from your office,  
7 looks like Hoisington and Morrissey, former office maybe.  
8 I don't know.

9 Q. Addressed to you?

10 A. Addressed to me.

11 Q. Did you -- and it bears the date of June 4,  
12 2003. Is that right?

13 A. Yes, sir.

14 Q. Did you receive that?

15 A. Yes, I did.

16 Q. Did you have occasion to review it at or  
17 about the time you received it?

18 A. Yes, sir.

19 Q. Did you take any action -- what if any  
20 action did you take subsequent to your receipt and review  
21 of the letter?

22 A. I don't remember. The second paragraph  
23 says, "As I understand your position you have purported  
24 to continue to provide legal services to Premier." You  
25 know, it was false. It is misrepresentation and ---

1 Q. And you just told me that now. Right?

2 A. I have told Maimonis that throughout.

3 Q. Did you tell that to me previously?

4 A. Pardon?

5 Q. Did you tell that to me previously to what  
6 you told me a couple of moments ago at the deposition?

7 MR. CORRIGAN: Objection, form.

8 Q. You had that reaction to the text of the  
9 letter and you shared that with me today. Did you share  
10 it with me at any prior point in time?

11 A. Not with you, no.

12 MR. MORRISSEY: I think we are going to  
13 suspend.

14 (Thereupon, at 5:30 p.m. the deposition was  
15 adjourned until 10:00 a.m. of the following day.)

16 - - -  
17  
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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CASE NO. C.A. 03-CV-12497

PREMIER CAPITAL, LLC,

Plaintiff,

-vs-

BEVERLY JOHNSON PENZELL, d/b/a  
Law Office of Kris E. Penzell  
and BEVERLY JOHNSON PENZELL, as  
Personal Representative of the  
Estate of Kris E. Penzell,

Defendants.

---

DEPOSITION OF BEVERLY PENZELL

VOLUME III

Wednesday, September 26, 2007  
10:10 a.m. - 11:40 a.m.

Courtyard Marriott Conference Room  
Miami, Florida 33156

Reported By:  
MARGARET PHILLIPS, Court Reporter  
Notary Public, State of Florida  
Klein, Bury, Reif, Applebaum & Associates  
Miami Office  
Phone - (305) 373.8404

## 1 APPEARANCES:

2 On behalf of the Plaintiff:  
 3 THOMAS JAMES MORRISSEY, Esquire  
 164 STRATMORE ROAD, SUITE 25  
 4 P. O. BOX 1336  
 BROOKLINE, MASSACHUSETTS 02446  
 5 617-787-3434

6 On behalf of the Defendants:  
 JOSEPH W. CORRIGAN, Esquire  
 7 POSTERNAK BLANKSTEIN & LUND  
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 8 PRUDENTIAL TOWER  
 BOSTON, MASSACHUSETTS 02199  
 9 617-973-6151

10 STEVEN A. SUSSMAN, Esquire  
 6 BEACON STREET  
 SUITE 400  
 11 BOSTON, MASSACHUSETTS 02108  
 12 617-973-4800

## 13 ALSO PRESENT

14 Richard Gleicher, Premier Capital

15 - - -

16 BEVERLY PENZELL

247

17 Plaintiff's Exhibit No. 26

247

18 Plaintiff's Exhibit No. 26

248

19 Plaintiff's Exhibit No. 27

262

20 Plaintiff's Exhibit Nos. 28 and 29

266

1 its rights for over two years after purchasing the  
2 judgments in question." What do you mean by the phrase,  
3 "Sat on its rights"?

4 A. Well, there was no attorney hired. Premier  
5 Capital didn't hire any attorney to pursue or give any  
6 authority to certainly the inventory attorneys to pursue  
7 these cases. There may have been one or two that  
8 somebody made an appearance we later found out, but there  
9 was no notification to our office, to Kris's office, you  
10 know, by anybody, you know, answering phones there or any  
11 attorney there from anybody asking to be substituting in  
12 on any of these files ever.

13 Q. Do I understand what you just said to mean  
14 that no other third ---

15 A. Outside attorney attempted to call the  
16 office.

17 Q. -- outside attorney contacted your firm  
18 relative to substitution of counsel?

19 A. Yes, sir.

20 Q. Anything else, any other basis for the  
21 basis of the phrase "sat on its rights" as used in this  
22 answer to interrogatory?

23 MR. SUSSMAN: Well, I have an objection  
24 because the answer itself is subject to an  
25 objection so ---

1 continues on page six, quote, "The Penzell estate." Do  
2 you see that?

3 A. Yes, sir.

4 Q. "Has been damaged by the amount of the fees  
5 not paid, the exact amount of which has not been  
6 determined but is likely in excess of \$100,000 to date."  
7 Do you see that?

8 A. Yes, sir.

9 Q. Would it be a fair to read that as  
10 amounting to an estimate of what you believe may be owed  
11 to you?

12 MR. SUSSMAN: Objection, owed to the law  
13 office.

14 Q. Owed to the law office, to the Penzell Law  
15 Office?

16 A. It says in excess of.

17 Q. Is it an estimate, ma'am?

18 A. We have never been told how much Premier  
19 has collected on Arroyave so we don't know what that  
20 number would be.

21 Q. Apart from Arroyave, which I understand  
22 forms part of your counter-claim --

23 A. Yes.

24 Q. -- there are other cases on which you  
25 assert in your counter-claim you are owed money, is that

1 services on prior to you purchasing it -- prior to  
2 Premier Capital purchasing it from Bank of America.

3 Q. OK.

4 A. And Exhibit C relates to the Arroyave  
5 judgments and although, you know, we learned that Premier  
6 Capital collected over \$25,000, four days after I  
7 forwarded the judgments to Premier Capital upon Nick  
8 Maimonis's request from me, we didn't learn that there  
9 was payment made on that until much later.

10 Q. Fair enough, ma'am. Moving back to your  
11 answers to interrogatories as the personal  
12 representative ---

13 A. Are we finished with these?

14 Q. Yes. We are. Go back to page five that I  
15 asked you a couple of questions on, interrogatory number  
16 five which we looked at earlier, the objection by counsel  
17 and the two paragraph answer. Do you see that, ma'am?

18 A. Yes.

19 Q. It continues to page six. You have had a  
20 chance to review that answer. Is that right?

21 A. Uh-huh, yes.

22 Q. Directing your attention to the next to the  
23 last sentence in the first paragraph of your answer.

24 A. The next to the last sentence?

25 Q. Beginning with "The basis."



1 A. So it is on page six.

2 Q. Do you have the right ---

3 A. I do. It is on page 6. I am on the same  
4 page.

5 Q. If I can quote the next to the last  
6 sentence. Quote, "The basis of determining the amount of  
7 damages is described in the fee agreement between the  
8 Penzell Law Firm and B of A."

9 A. Yes, sir.

10 Q. The amount of damages in this context is  
11 the amount of damages owed by Premier to you, to you the  
12 Penzell Law Firm. Is that right?

13 A. Yes, sir.

14 Q. Do you see the reference to the fee  
15 agreement between the Penzell Law Firm office and B of A?

16 A. Yes, sir.

17 Q. What fee agreement are you referring to  
18 there?

19 A. The only fee agreement that I understand we  
20 have discussed together is the 1998 fee agreement  
21 identified as Susan Noe 2, and whatever else I'm not  
22 sure.

23 Q. Fair enough. You have made a claim under  
24 your counter-claim for damages with respect to the  
25 Arroyave matter?

1           A.     Yes, sir.

2           Q.     The Arroyave matter is form of shorthand  
3     that is acceptable to you?

4           A.     Arroyave, yes, sir.

5           Q.     I wonder if you could summarize for me the  
6     nature of your claim with respect to claim for damages  
7     with respect to that matter.

8           A.     Well, I have been advised by both inventory  
9     attorneys and my husband in his lifetime that in Florida  
10    when you have a contingency fee agreement when something  
11    is substantially collected at the time the attorney is  
12    entitled to his contingency fee, and so that is why  
13    because Arroyave was essentially collected at the time of  
14    purchase it becomes a contingency fee.

15          Q.     Was there conduct by Premier in regard to  
16    Arroyave that you believe in claiming your counter-claim  
17    was improper?

18          A.     Absolutely.

19          Q.     What was that?

20          A.     Well, Mr. Maimonis from Premier Capital  
21    called me on January 11th. I believe it was a Friday.

22          Q.     Of what year?

23          A.     2002. And he said, "Could you send me the  
24    two judgments on Arroyave and the fee agreement?"

25                 I said sure. I was very cooperative. I

1 was giving him everything he asked for, and I went to  
2 Denise, "Are there two judgments on Arroyave," because I  
3 only knew about one.

4 She goes, "Oh, yes, Beverly. One of them  
5 was forwarded to Kris from Bruce Wahoo, another attorney,  
6 and the bank gave that to Kris to collect along with the  
7 instructions for Kris to obtain a judgment on the next  
8 debt."

9 So I forwarded that to Mr. Maimonis on  
10 January 11th and years into the lawsuit we learned that  
11 Premier Capital had been in communication with Ameriquest  
12 Mortgage making a deal behind our back and I sent that on  
13 a Friday.

14 On a Tuesday Premier Capital collected over  
15 \$25,000 and did it as a subordination which, you know, I  
16 learned is, you know, something that wouldn't show on  
17 record. So as we were trying to find out if you had  
18 collected anything since we were never advised, we  
19 learned of the subordination and that I believe was  
20 signed or notarized by you, your name is on there, and  
21 Mr. Maimonis signed it, so I think that is very unfair  
22 dealing.

23 Q. Did you submit an invoice to Premier after  
24 you learned of Premier having received money in that  
25 matter for what you believe to be owed to the Penzell Law

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. 03-CV-12497

FILED 10 P 12 32

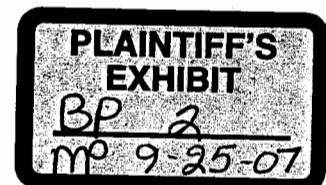
PREMIER CAPITAL, LLC )  
Plaintiff, )  
v. )  
BEVERLY JOHNSON PENZELL, )  
d/b/a Law Office of Kris E. Penzell )  
and BEVERLY JOHNSON )  
PENZELL, as Personal )  
Representative of the Estate of )  
Kris E. Penzell )  
Defendants. )

DISTRICT COURT  
DISTRICT OF MASS.

**AFFIDAVIT OF BEVERLY JOHNSON PENZELL IN SUPPORT OF HER  
MOTION TO DISMISS**

I, Beverly Johnson Penzell, do hereby depose under oath and assert as follows:

1. I am a lifelong resident of Florida. I was born in Miami, Florida and I currently reside in Miami Beach, Florida. I have never worked, studied or lived in Massachusetts.
2. I attended school in Miami, Florida and graduated from college in Florida.
3. My entire professional career has been in Florida.
4. In 1973, I began to work for Kris E. Penzell, Esquire as his secretary, and I worked for him full time at various law firms in Florida until 1981.
5. I married Kris E. Penzell on October 7, 1980.
6. The Law Office of Kris E. Penzell, P.A., which was established in 1985, was confined to Florida, the only state where Kris E. Penzell was admitted to practice law.
7. My husband's law office never conducted any business with anyone located in Massachusetts, never derived any income from Massachusetts, and never handled any case for a Massachusetts' client.



8. Although I have been sued in my name as a d/b/a, I have never done business as the Law Office of Kris Penzell. I have never held myself out as an attorney.

9. My husband, Kris E. Penzell, died on March 8, 2000. He was domiciled in Miami Beach, Florida at the time of his death.

10. The probate matter involving his estate, for which I am serving as the personal representative, is currently pending in the 11<sup>th</sup> Judicial Circuit of Florida, Miami-Dade County. In my capacity as Personal Representative of the Estate of Kris E. Penzell I did not engage in business in Massachusetts, nor did I individually engage in business in Massachusetts. In conjunction with the probate matter, an administrative judge appointed an "inventory attorney" to oversee the winding down of the law firm.

11. Under the direction of the court appointed inventory attorney, I have assisted in the winding down of my husband's law firm. All of the work I have performed relative to the winding down of my husband's law firm has occurred in Florida and is related to Florida lawsuits or judgments.

12. The only reason I have ever visited Massachusetts was for family matters and to visit members of my family living or visiting there.

13. The Law Office of Kris E. Penzell, P.A. provided services for Barnett Bank, a banking association chartered in Jacksonville, Florida. These services were performed solely in Florida. Barnett Bank thereafter merged with NationsBank, N.A. ("NationsBank"), a banking association chartered in Charlotte, North Carolina. On December 23, 1998, the Law Office of Kris E. Penzell, P.A. entered into a contingency fee agreement with NationsBank, pursuant to which the Law Office of Kris E. Penzell, P.A. agreed to prosecute certain collection matters in Florida arising from certain collection accounts of NationsBank (the "collection accounts").

Attached hereto ("Exhibit A") is a true and accurate copy of the contingency fee agreement. In any event, the contingency fee agreement itself provides that it was executed in North Carolina and is governed by North Carolina law.

14. Subsequent to the agreement between NationsBank and the Law Office of Kris E. Penzell, P.A., the assets of NationsBank, including the collection accounts, were sold to Bank of America, a banking association chartered in Charlotte, North Carolina.

15. In October 2001 (a year and a half after my husband's death), I learned that certain accounts of Bank of America, including certain collection accounts formerly handled by my husband's firm, were sold to Premier Capital, LLC ("Premier Capital"), a company incorporated in Delaware and headquartered in Massachusetts.

16. Premier Capital subsequently refused to pay the estate of Kris E. Penzell the amounts due under the contingency fee agreement, giving rise to this controversy. It was the fortuitous occurrence of the collection accounts being sold to Premier Capital and Premier Capital's unilateral conduct that forced me to have contact with Premier Capital in an effort to assist in the winding down of my husband's law firm.

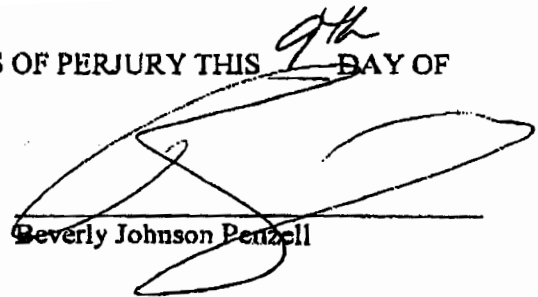
17. I never purposefully solicited or conducted any business in Massachusetts. I did not cause or create the situation of my husband's client, NationsBank, selling its assets to Bank of America, which then sold certain of its assets to Premier Capital, a Delaware corporation. Any communications I had with Premier Capital were conducted to settle the fees due my husband's firm, resulting from Florida judgments he obtained for Premier's predecessor in interest -- claims which needed to be resolved in order to wind down my husband's business and close his estate.



SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 9<sup>th</sup> DAY OF

~~JANUARY~~ 2004.

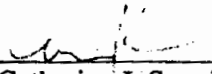
FEBRUARY

  
Beverly Johnson Penzell

**CERTIFICATE OF SERVICE**

I, Catherine J. Savoie, hereby certify that I have served a copy of the Affidavit of Beverly Johnson Penzell in Support of Her Motion to Dismiss by first class mail, postage prepaid, this 9<sup>th</sup> day of February 2004 upon the following:

Thomas J. Morrissey, Esq.  
Hoisington and Morrissey P.A.  
1506 Drift Road  
Westport, MA 02790

  
Catherine J. Savoie

### SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Release") is made this the \_\_\_\_ day of \_\_\_\_\_, 1999 by and between Bank of America, N.A. d/b/a NationsBank, N.A. successor to Barnett Bank, N.A., successor to Barnett Bank of South Florida, its subsidiaries, parents and affiliates ("Bank") and Kris Penzell, P.A. and Kris Penzell, individually, ("Penzell"), hereinafter collectively referred to as the "Parties".

WHEREAS, prior to December 23, 1998, the Bank and Penzell entered into agreement(s) wherein Penzell agreed to provide collection-related legal services on certain accounts referred to him by the Bank and the Bank agreed to pay Penzell a certain fee upon collection ("Old Barnett Agreement").

WHEREAS, prior to December 23, 1998, the Bank referred certain accounts to Penzell to provide collection-related legal services pursuant to the terms of the Old Barnett Agreement ("Old Barnett Matters").

WHEREAS, on December 23, 1998, the Bank and Penzell entered into a new agreement, attached hereto and incorporated herein as Exhibit A, regarding the terms and conditions under which Penzell would provide collection-related legal services on accounts referred to him by the Bank and Penzell's compensation therefrom ("New Agreement").

WHEREAS, a dispute has arisen between the Parties regarding the terms and conditions under which Penzell is providing collection-related legal services on accounts referred to him by the Bank and Penzell's compensation therefrom ("Dispute").

WHEREAS, the Parties in order to resolve the Dispute and avoid confusion, desire to clarify the terms and conditions under which Penzell will provide collection-related legal services on accounts referred to him by the Bank and Penzell's compensation therefrom.

NOW, in consideration of the foregoing and other good and valuable consideration, the Parties intend to be legally bound by this Release, agree as follows:

1. All Old Barnett Agreements are hereby terminated and are hereinafter null and void.
2. All matters referred to Penzell for collection-related legal services on or after December 23, 1998 will be governed by the New Agreement.
3. Penzell may provide collection-related legal services on the matters listed on Exhibit B attached hereto and incorporated herein by reference and receive compensation therefrom pursuant to the terms of the New Agreement.
4. If Penzell desires to continue providing collection-related legal services on any of the Old Barnett Matters, which are not listed on Exhibit B, Penzell must obtain written permission from the Bank to do so. If Penzell obtains such written permission from the Bank,





the terms and conditions of the New Agreement will apply. The Bank reserves the right, without explanation and in its sole discretion, to withhold permission for any reason.

5. Unless the Bank gives Penzell written permission as stated in paragraph 4, Penzell hereby and forever releases the Bank, its predecessors, officers, managers, directors, shareholders, employees, agents, attorneys, representatives, parent corporations, subsidiaries and affiliates, from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, off sets, rights, actions and causes of action of any nature whatsoever, including, without limitation, all claims, demands, causes of action, expenses, including, but not limited to reasonable attorneys' fees and disbursements Penzell has sustained or may hereinafter sustain, which relate in any way to Old Barnett Matters, not listed on Exhibit B.

6. Penzell hereby and forever releases the Bank, its predecessors, officers, managers, directors, shareholders, employees, agents, attorneys, representatives, parent corporations, subsidiaries and affiliates from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, off sets, rights, actions and causes of action of any nature whatsoever, including, without limitation, all claims, demands, causes of action, expenses, including, but not limited to reasonable attorneys' fees and disbursements Penzell has sustained or may hereinafter sustain, which relate in any way to the Old Barnett Agreements or collection efforts related thereto.

7. The Parties execution of this Release is not in any way based upon any reliance upon any representation, understanding or agreement not expressly set forth herein and neither party has made any representations to the other not expressly set forth herein.

8. The Parties execute this Release as a free and voluntary act without any duress, coercion or undue influence exerted by or on behalf of either party.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and the laws of the United States of America applicable to such transactions within such state, including without limitation in relation to all matters of formation, interpretation, construction, validity, performance and enforcement.

10. In the event of any question or dispute under this Agreement, the Parties agree that the terms of this Agreement shall not be construed against the drafter but shall be construed as though all parties were the drafter.

11. This Release is a compromise of a disputed claim and this Release is not to be construed as an admission of liability by either party.

12. If any term, provision or condition of this Release is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Release shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

13. This Release is binding upon the Parties, their heirs, executors, administrators, assigns, successors in interest, predecessors in interest and anyone claiming by and through or under any of them.

14. This Release constitutes the entire agreement between the Parties and is a final and complete release of those matters set forth herein and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and General Release as of the date set forth above.

BANK OF AMERICA, N.A. d/b/a NationsBank,  
N.A., successor to Barnett Bank, N.A., successor to  
Barnett Bank of South Florida

By: Jacqueline Cristiam  
Name: Jacqueline Cristiam  
Title: Vice President  
Date: Dec 6, 1999

Kris Penzell, P.A.

By: [Signature] PA  
Title: Vice President  
Date: Nov 29, 1999

[Signature]  
Kris Penzell

## EXHIBIT A

CONTINGENCY FEE AGREEMENT

This Contingency Fee Agreement ("Agreement") is entered into this 23 day of December, 1998, by and between NationsBank, N.A. ("Bank") and Kris Penzell (the "Attorney").

**I. FEES AND COSTS.****A. Fees.**

The Attorney's fees for matters forwarded pursuant to this Agreement and the Contingency Attorney Referral attached hereto as Exhibit A ("Matters") shall be wholly contingent upon collection and shall be at the rate of thirty percent (30%) contingency basis on all amounts collected, unless otherwise designated in writing by Bank.

**B. Costs.**

In no event shall the Attorney incur any reasonable expenses in excess of \$250.00 with respect to any matter without the Bank's prior approval. Costs shall include actual costs incurred in connection with the preparation and prosecution of the Matter and must be within the limits set forth in the Bank's Procedures for Outside Counsel, which are hereby incorporated by reference. Costs shall be billed each month and identified as to each corresponding Matter.

**C. Application of Collected Funds.**

In the event that the Attorney collects any funds as the result of prosecution of a Matter, the Firm shall be entitled to apply said funds as follows: (i) first, to reimbursement of any costs incurred and not previously reimbursed, (ii) second, to reimburse Bank for any costs already billed and paid by Bank, (iii) third, to the Attorney to pay the thirty percent (30%) contingency fee, and (iv) to the Bank.

**D. Remittance of Funds.**

The Attorney shall be responsible for collection of all monies due from debtors on all Matters subject to this Agreement. The Firm shall be permitted to deduct the agreed costs and contingency fees from the funds collected and must remit the remaining balance of all such funds collected to Bank no later than fifteen (15) days from receipt of each payment in the Attorney's office. The Attorney shall provide the Bank with a full accounting of each such remittance at the time of payment



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thereof. In addition to the above, the Attorney shall provide to the Bank a monthly accounting of all monies received and all payments made with respect to each Matter during the prior month. In the event the Bank directly receives funds on a Matter, Bank agrees to process such payment and forward to the Firm the appropriate contingency fee within thirty (30) days from receipt thereof.

## II. WORK TO BE PERFORMED.

Each Matter subject to this Agreement may require one or more of the following types of collection efforts. In addition, other methods of collection may be required. The time deadlines indicated below in Section II of this Agreement can be modified with the express consent of the Bank.

### A. Review Credit File and Determine Litigation Probability.

Within thirty (30) days of receipt of the Matter, the Attorney will review the credit and collateral files applicable to each Matter and will prepare a written summary report to reflect the status of the file and the Bank's position. This review includes a recommendation as to whether action, including litigation, against the collateral and/or the obligors is feasible. If it is determined that the debt is uncollectable or that the costs to collect the debt outweigh the benefits of collection, the Attorney agrees to return the file to the Bank at no charge.

### B. Demand On Debtor.

The Attorney will make formal written demand on the debtor for payment of the indebtedness within forty-five (45) days of receipt of the Matter.

### C. Litigation.

Within ninety (90) days of receipt of the Matter, if the Bank expressly determines that litigation should be filed against the debtor, the Attorney will investigate the facts necessary to prepare the lawsuit, file the lawsuit and prepare and file an initial set of discovery requests.

### D. Bankruptcy.

If a debtor files for bankruptcy protection, the Attorney will immediately notify the Bank in writing and will thereafter file a Notice of Appearance. With the permission and assistance of the Bank, the Attorney will file a Proof of Claim, even if the bankruptcy

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notice indicates that the Matter is a "no asset" case, and Motion For Relief From Stay as required under the circumstances.

**E. Post-Judgment Collection Efforts.**

Once a final judgment has been entered against a debtor, the Attorney agrees to initiate appropriate post-judgment proceedings, including, but not limited to, recording judgments in the appropriate jurisdictions, post-judgment discovery, garnishment proceedings, obtaining writs of execution and other proceedings as may be appropriate in the applicable jurisdiction.

**III. STATUS REPORTS.**

The Attorney shall keep the Bank informed of the status of each Matter by timely sending the Bank a copy of all correspondence and pleadings involved in each Matter. In addition upon request, the Attorney shall provide the Bank a status report on any or all Matters that the Attorney is handling in the form attached as Exhibit B.

**IV. SETTLEMENTS.**

In the event that the debtor in a particular Matter indicates a willingness to resolve the Matter for less than the full amount of the debt owed to Bank, the Attorney may settle such Matter only with the written consent of Bank.

**V. COUNTERCLAIMS.**

In the event a counterclaim should be filed against the Bank in any Matter, the Attorney shall immediately notify Bank of the same and Bank shall have the right to elect to transfer the Matter to another counsel of Bank's choice. On such transfer, the Firm shall provide Bank with a written invoice showing the number of hours expended on the Matter at an hourly rate of \$110.00 per hour, and Bank may elect to either (i) pay the invoice in full satisfaction of the Attorney's claims as to the Matter, or (ii) pay the Attorney a reduced contingency fee of fifteen percent (15%) of all funds collected by Bank following transfer. In the event a counterclaim which has resulted in a transfer is later resolved, Bank may elect to return the Matter to the Attorney at the Attorney's regular contingency rate, and to the extent Bank has paid the Attorney an hourly fee as set forth above, the amount of said hourly fee paid shall be deducted from the contingency amount upon any later collection of Bank's claim. In the event the Matter remains

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with the Attorney, the manner in which the counterclaim shall be handled shall be determined on a case by case basis.

## VI. TERMINATION.

### A. For Cause.

In the event the Attorney fails to timely or fully remit any amount due to Bank, or fails to do any other act required by this Agreement or fails to perform said act in a timely manner, Bank may at any time notify the Firm in writing of its concerns and objections. The Firm shall have thirty (30) days from the date of such notice to take corrective action. If, at the end of the thirty (30) day period, all problems have not been resolved to Bank's full satisfaction, Bank shall have the unilateral right, in its sole and absolute discretion to terminate this Agreement by notice to the Firm in writing, and to withdraw any and all files Bank deems necessary to effect the termination.

### B. Without Cause.

At any time after one (1) year following the date of this Agreement, Bank may terminate this Agreement for any reason or for no reason at all. Notice of termination shall be in writing and shall be effective thirty (30) days after receipt.

### C. Bank Recall.

From time to time, Bank may recall a Matter for any reason or no reason at all from Attorney and reserves the right to take such action. In such instances, the Attorney agrees to return all original files and documents related to the recalled Matter within fifteen (15) days from notification. If a matter is recalled, Attorney will be compensated as indicated in paragraph D below.

### D. Payment Upon Termination.

Upon termination as set forth in Section A above, the Attorney shall be entitled to compensation as follows: (i) as to any Matters in which a payment agreement has been previously reached with the debtor, the Attorney shall be entitled to collect its agreed contingency fee and all funds collected under such payment agreement; and (ii) as to Matters in which no payment agreement has been reached prior to termination, the Attorney shall provide the Bank with a written invoice for each terminated Matter showing the number of hours expended on each



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terminated Matter at the hourly rate of \$110.00 per hour and as to each individual Matter Bank may thereupon elect to either (i) pay said invoice in full satisfaction of the Firm's claims to each terminated Matter or (ii) pay the Attorney at a reduced contingency fee of fifteen percent (15%) of all funds collected by Bank, if any, following termination.

Upon termination as set forth in Sections B and C above, the Attorney shall be entitled to compensation as follows: (i) as to any Matters in which a payment agreement has been previously reached with the Debtor, the Attorney shall be entitled to collect its agreed contingency fee and all funds collected under such payment agreement; and (ii) as to Matters in which no payment agreement has been reached prior to termination, the Attorney shall provide the Bank with a written invoice for each terminated Matter showing the number of hours expended on each terminated Matter at the hourly rate of \$110.00 per hour, and as to each individual Matter Bank may pay said invoice in full satisfaction of the firm's claims to each terminated Matter.

#### E. Attorney's Right To Terminate.

The Attorney has the right to terminate this Agreement by providing Bank with ninety (90) days' written notice of such termination. However, upon any such termination initiated by the Attorney, contingency fees for payment made after a termination date are waived.

### VII. RETENTION AND RETURN OF FILES

When a Matter is completed through collection or when collection efforts are abandoned, the Attorney shall maintain all records related thereto for a period of five (5) years. If this Agreement is terminated as set forth above, the Attorney shall return all original files and documents to Bank along with a complete set of all pleadings filed in the case within thirty (30) days from the date of termination.

### VIII. OTHERS MATTERS

#### A. Matters Outside Attorney's Service Area:

In the event Attorney is unable to handle a particular matter due to a defendant being located outside Attorney's usual service area, Attorney shall immediately contact Bank in writing to advise Bank of the circumstances. Bank shall thereupon have the option of authorizing attorney to employ the assistance of legal counsel in the area where

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the defendant is located, subject to the Bank's prior written approval. In no event shall the Bank be responsible for fees beyond the agreed contingency fees set forth herein above and any proposed agreement with outside counsel engaged by Attorney shall be subject to prior written approval by Bank.

**B. Geographic Areas.**

The Attorney will handle matters under this Agreement in the following areas: \_\_\_\_\_

The Attorney acknowledges that this Agreement is not an agreement for exclusive representation of the Bank by the Attorney in the Geographic Area and that the Bank reserves the right to send matters in the Geographic Area to other attorneys.

**C. Liability.**

The Attorney will review the Bank's file and submit an accurate report based on the documents contained in the file. Since the file review is limited to the documents available in the Bank's file, the Attorney will not represent that the information is complete. Unless specifically engaged, the Attorney is not expected to search records or public filings not contained in the Bank's file. Unless expressly noted in the report, the report submitted is not a legal opinion on the perfection or priority of the Bank's lien on the collateral.

**D. Hold Harmless.**

The Attorney agrees to comply with all laws, federal, state or local and, without limitation, the Fair Debt Collection Practices Act. The Attorney agrees to indemnify, release and hold the Bank harmless from any and all damages, claims, liability, debts, causes of action, claims for relief or loss of any kind, including all attorneys' fees, legal costs and expenses, arising from the Attorney's acts or omissions, the Attorney's violation of any law or the Attorney's negligence. The Attorney also holds the Bank harmless from the acts of the Attorney's servants, employees, agents, agencies or independent contractors. The Bank agrees to indemnify, release and hold the Attorney harmless from any and all damages, claims, liability, debts, causes of action, claims for relief or loss of any kind, including all attorney's fees, legal costs and expenses arising from the Bank's acts or omissions, Bank's violation of any law or Bank's negligence. Bank also holds the Attorney



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harmless from the acts of Bank's servants, employees, agents, agencies or independent contractors.

**E. Full and Complete Agreement.**

This Agreement represents the full and complete understanding of the parties with respect to the subject matter hereof. This fully integrated Agreement shall supersede all prior and contemporaneous negotiations, discussions, representations, agreements and accords that are not expressly incorporated herein.

**F. Successors and Assigns.**

This Agreement shall inure to the benefit of each of the parties hereto shall be fully binding upon them and their respective heirs, personal representatives, and successors. In no event shall this Agreement be assignable by the Attorney.

**G. Applicable Law.**

This Agreement has been negotiated, executed and delivered, and shall be deemed to have been made in the State of North Carolina, and the validity of this Agreement, its construction, its interpretation and enforcement and the rights of the parties hereunder, shall be determined under, and governed by and construed in accordance with the laws of the State of North Carolina.

**H. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one in the same instrument and it shall be binding upon each of the undersigned individually as fully and completely as if all had signed but one instrument.

**I. Severability**

To the extent that any provision in this Agreement is held to be unenforceable, the remaining portions of the Agreement shall continue to have full force and effect and shall be interpreted to achieve the overall intentions of the parties hereunder.



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J. Time is of the Essence

The Attorney agrees and acknowledges that time is of the essence to this Agreement.

NationsBank, N.A.

By: [Signature]  
Name: Stephen B. Mays  
Title: Senior Counsel

KASE PENZELL P.A.  
Name of Law Firm

By: [Signature]  
Name: KASE PENZELL  
Title: PRESIDENT

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EXHIBIT B

833981	A.R.P. International Inc.; Larraz, Antonio R. and Periamarina	04/24/1984	\$ 16,311.22	
929488	Ackerman, Raymond and Sandra G.	11/08/1996	23,966.66	Raymond - Bkt
833982	Advance Fork Lifts Inc.; Tonks, Robert M.	02/22/1984	29,364.98	
864645	Alvarez, Angel B.	08/04/1988	6,473.38	
929487	American Furniture/Shoffron, Ronald & Judith	04/27/1992	209,874.59	
909185	Battah, Antuona & Tracy	N/A	Stipulation	owes \$345.95
833908	Biotronics Inc./Bernard and Martene Conti	02/24/1984	14,901.42	
909160	Burton, Harvey			continuing paym
833851	Carrasquero, Jorge F. & Amneris	06/29/1983	6,311.74	
864880	Chaka, Kiambu; Idella C. Chaka a/k/a Idella C. Jackson	08/03/1987	64,418.85	
979889	Chamberlain, John and Anamaria	N/A	Stipulation	continuing paym
919327	Cohn, Stanley & Jeanne	07/29/1991	29,403.65	
874921	Design Home Remodeling (Edelstein, Harold & Grilla, Louis)	03/31/1987	5,658.50	partial payment
929510	Diversified Aerospace/R. Syx; M. Davis and W. David	05/17/1993	173,674.74	\$78,905 Paid
9710000	Doherty, Henry	N/A	Stipulation	continuing paym
919339	Einhorn, Donald M.	09/04/1991	30,432.10	
919330	Equinox Productions Inc./Dennis R. Linn	11/04/1991	59,102.82	
898986	First Summit Corp.; Robert Crows	04/24/1989	23,312.93	
875019	Golden Razor Barber Shop; Carmine Brancaccio	08/03/1987	9,752.68	
909187	Green, Morgan & Debra	09/18/1990	1,758.19	
833977	Guerza-Nunez, Mirta	03/16/1984	8,777.39	
899126	Herrera, Jose	10/03/1989	109,208.22	continuing paym
929529	J. Lynn Development Corp. and Bernd D. Hargreaves	07/08/1993	8,759.56	
899028	Jayson, Jeni L. d/b/a/ Infant Wear	11/30/1989	7,460.58	partial payment
844234	Kappa Fashions Inc./Liebert Bass and Doris Horwitz	06/19/1985	24,063.67	
854390	Kenworthy, Thomas W.	07/08/1986	5,855.51	
899076	Khawly, Rooney	02/11/1985	572,554.67	continuing paym
919366	Lanier & Sons Steam Clean Carpet Service/Sylvia Gibson	07/01/1998	7,412.47	
844248	Le Esplanade Time & Gold Shop Inc.; Isabel and William Cobb	02/15/1985	9,145.47	
854437	Le Sante, Jorge G.	12/03/1984	3,833.24	
864786	Lioy, Antonio	10/24/1988	20,831.16	
833976	Loredo, Felix, G.	03/01/1984	13,405.29	
909189	Mar Gil Inc. d/b/a Light King; Martin Norris & Gilbert Arenella	09/26/1990	4,981.66	
864731	Martinez, Hiram	02/20/1987	29,090.63	
888900	Metro Fire & Safety; Knoopfle, Ken	04/15/1986	77,071.08	partial payment
887076	Metropolitan Industries Inc.; Ward, James F.	10/31/1988	26,107.93	
875015	Oliveros, Generoso and Marisela	06/30/1987	7,215.91	
887080	Pauls, James D. Sr.	03/23/1990	20,017.98	
919310	Quadradial Studio/Robert Ingria	09/17/1991	97,826.46	Ingria only
899031	Rainbow Exports Inc.; Consalvo, Alberto, Oscar & Delfa N.	11/07/1988	4,979.35	
887064	Record Land Export Inc.; Palmero, Jose & Miguel; Monserrat, Jaime	08/26/1988	27,512.26	Palmero paid 5K
899117	Redlands Airconditioning & Refrigeration Inc.; Acor & Hardee, Jack	04/27/1999	13,317.98	Acor paid \$7200
844209	Rios, Ricardo and Ben Gross	11/27/1984	12,310.66	
854434	Sabatini, Giorgio	05/08/1985	54,505.71	
978990	Santiago Medical Center Corp. and Carmen D. Perez-Bovdet	05/20/1999	40,499.00	Perez-Bovdet onl
909249	Schindler, Jerry & Abramowitz, Rochelle	01/04/1991	19,967.11	Abramowitz - 5K
844060	Top Ranking International Inc./Turian M. Hutchinson	05/09/1985	98,552.10	
929524	Top Ten Card Co. Inc.; West, Gary & Jennair	10/02/1987	89,677.46	
919306	Velmas Golden Needle/Butler, Velma	05/24/1991	9,505.25	
899016	Vittum, David & Ceslyn	04/14/1989	88,115.80	
909264	Wetstein, Patricia Araujo/Andre Care	01/27/1992	52,049.42	partial payment
864628	Wolfe, Clifford	07/14/1999	21,122.34	

Initial

K??

Date

11/29/06

STATE OF NORTH CAROLINA

COUNTY OF Union

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of December, 1999, by Jacqueline Cristiano, as Vice President of BANK OF AMERICA, N.A., a national banking association, on behalf of said association. ~~He~~/She is personally known to me or has produced \_\_\_\_\_ as identification.

Cynthia H. Fisher  
NOTARY PUBLIC, State of North Carolina  
Name: Cynthia H. Fisher  
Serial No.: \_\_\_\_\_  
My Commission Expires: 9-02-2001  
(SEAL)

STATE OF FLORIDA

COUNTY OF Dade

The foregoing instrument was acknowledged before me this 29 day of Nov., 1999, by Kris E. Penzell, as President of Kris E. Penzell PA, a professional association, on behalf of said association. ~~He~~/She is personally known to me or has produced \_\_\_\_\_ as identification.

Witness my hand and seal.

D. Chardiet-Storey  
NOTARY PUBLIC, State of Florida  
Name: Doris Chardiet-Storey  
Serial No.: CC753398  
My Commission Expires: \_\_\_\_\_  
(SEAL)

NOTARY PUBLIC - STATE OF FLORIDA  
DORIS CHARDIET-STOREY  
COMMISSION # CC753398  
EXPIRES 10/11/2002  
BORNED THRU ASA 1-888-NOTARY1



## PREMIER CAPITAL, LLC

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### FACSIMILE TRANSMISSION

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TO:	FROM:
Beverly Penzell	Nick J. Maimonis (e-mail address: maimonis@premiercapitalnet.com)
COMPANY:	DATE:
	SEPTEMBER 25, 2002
FAX NUMBER:	PHONE NUMBER:
305 531-5175	305 531-3000
RE:	TOTAL NO. OF PAGES INCLUDING COVER:
Response to 8/6/02 Status Report	5

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☐ URGENT    ☐ FOR YOUR REVIEW    ☐ PER YOUR REQUEST    ☐ PLEASE REPLY    ☐ OTHER

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NOTES/COMMENTS:

Beverly,

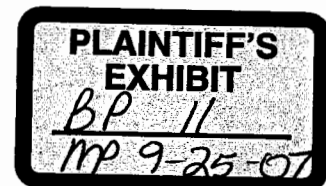
Following is my assessment/review of the August 6, 2002 Status Report that you provided on the matters that you are currently working for us.

Please review my comments, suggestions and or concerns and either call me before you leave for vacation, or have Susan call me to discuss these matters so we can get going on them.

As far as the fees for the asset searches, I have no problem in getting you a check to pay this cost. However, I would also like to receive a copy of each of these reports, so I can assess their value going forward for these, as well as other matters. Also, with regard to one of the charges set at \$45.00. I don't understand why this would be so high, especially where the information that came back appears to be of no value, etc.

Let me know.

Thanks!



# *Premier Capital, LLC*

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Response to August 6, 2002 Status Report(Penzell)

9/25/02 (NM)

Bradley Boat Repair	Why don't we file a wage garnishment and if she raises defenses, we have a built in debtor's exam at that point in time. As I advised months ago, I believe she works at Biscayne Pilots. As far as numerous addresses, I think if we file our garnishment, we can get all necessary info to come out in the wash if and when she raises any defenses. Let me know.
Brancaccio	My understanding is that you conducted a debtor's exam a few years ago and came up with no information. As I indicated on my referral form, we should look at attaching this guy's real estate; serve info subpoenas on some of his more recent creditors; and forget the debtor's exam for now.
Butler	Forget the deposition for now. Serve the info subpoena on Home side Lending and see what info we come up with. Pursue the possible real estate that you have eluded to in your status report, as well as his owner occupied property (record the Judgment lien)
Cabanas	You state that a National Search has been completed, but you want to complete the research?? Assuming the initial research came up empty, what additional research is being proposed here? Cost?
Chaka	When I referred this matter back to you, my instructions were to serve info subpoena's on 3 creditors (BofA, HBSBNA and Capital One) I also gave you information as to a possible business interest that he has/had (Jackson Holding Corp). Before we go as far as setting this for deposition, we need to get our ducks lined up here, so we at least have a foundation to start with, should we need to.

Premier Capital LLC.

Page: 2

September 25, 2002

Gipson

Why are we so focused on a deposition here? We have a job on her and the one that I gave you for him you state he is no longer employed at. Why don't we simply serve the wage garnishment and let her bring any defenses to the table, at which point we can also possibly address some of the issues that we'd address in a deposition. What about the corp.'s? If she is indeed the owner, why haven't we pursued attaching her interests?

Grilla

Assuming we have nothing to go with on these guys, I would agree that we should conduct a debtor's exam for Grilla. Prior to the exam, I would like to review the line of questioning, as well as what information we have qualified before hand.

Hardee

The information that is provided on the status report is essentially a reiteration of what I presented to you upon referral. I don't see conducting a debtor's exam quite yet, at least not until more homework has been done. i.e. can we prove he has ownership interest in any of the corp.'s? If so, can we attach those interests? If we have exhausted these avenues, then debtor exam in order.

Jayson

If our Judgment was obtained in 1989 and it supposedly liened the real estate that she owned, the fact that she was able to sell that property should be explored. What is our recourse regarding this? Do we have a title insurance claim here? Etc. I don't see conducting a deposition here, as when I spoke with her months ago, she stated that she is a stay at home mom w/2 infants, etc. She also stated that the original loan was taken out by her on behalf of her dad for business (straw deal) Do we have recourse here? Let's at least entertain the issue of the real estate being sold from under "us" back in 1996.

Kenworthy

Assuming we can find this guy as a matter of fact, what could we expect to possibly find out that he'd volunteer to us at a deposition? Unless we have some ammunition to corner him, no reason for deposition at this stage. And, if we have/had this ammunition, we would be looking to execute on it anyway. You state that there were 2 more asset checks to be completed on this guy? Has this been completed? Have any specific assets been established for this guy that we can go after now?

Lioy

Your suggested action of serving subpoena's on license and INS records. What is would we be looking at here, both from an informational, as well as a cost perspective? Depending on your answer, this sounds good to me!



Premier Capital LLC.

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Mangue	What do you mean by additional inquiry before any action??
Mazon	Assuming she/he purchased a property subsequent to our judgment and their bankruptcy. Wouldn't our judgment lien be sr to any mortgage, if it was properly recorded within the given county? If so, can we pursue title claim, etc? As far as a deposition at this stage, it would appear to make more sense to exhaust your research efforts first, whereby the 9 additional properties, as well as the corporate leads have been confirmed, one way or another.
Martinez	Before we entertain a deposition, we should finalize the outstanding asset search issues, (real estate and corp. possibilities) then conduct the deposition.
Moreno	I'm not sure I quite understand this update/suggested action. It seems more needs to be done before we depose. Let me know
Ramos	My understanding on this matter is that you/the bank, filed a late Proof of Claim, thus not being made part of the Plan. Assuming these debtors included financial information as it related to the business in their bankruptcy, it would probably make sense to access such information. The research on 6 properties, as well as on the corporations would also be in order here before we set this for deposition.
Rios	Complete research is agreed. However, you indicate a \$45.00 charge for the searches that have been completed to date. Why so high and what did this reveal?? If we go forward with additional research, what can we expect the cost to grow to??
Wisteria	The information that I gave you upon referral was to attach his wages at Asadoria Rug Co. Additionally, there is the distinct possibility that he fraudulently transferred his LA real estate to his folks. We need to get at that information, so we can pursue this in LA at the same time.
Ward	As indicated on my fax and discussion with you yesterday, this guy filed chapter 7. It appears there are many questions that would surround this filing, however, I can't access the Pacer documents to see what he filed, etc. As such, we need all schedules so we can establish any inconsistencies that we may be able to raise at a 341 meeting, which is set for 10/8/02.

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West

Aside from the possibility that these debtors have an ownership interest in a/some corporations, I agree that additional research is in order here, then depose them and establish anything that we can work with??

**HOISINGTON & MORRISSEY**

A Professional Association  
1506 Drift Road  
Westport, Massachusetts 02790  
Tel. (508) 636-7363

Miles E. Hoisington\*  
Thomas James Morrissey

\*also admitted in New York  
Fax (508) 636-3133

June 4, 2003

BY CERTIFIED MAIL  
No. 7099 3400 0010 8707 1396  
RETURN RECEIPT REQUESTED  
Beverly Penzell  
Law Offices of Kris E. Penzell  
407 Lincoln Road, Suite 10-D  
Miami Beach, Florida 33139

Re: Premier Capital, LLC Litigation Matters

Dear Ms. Penzell:

I represent Premier Capital, LLC ("Premier"). I have been asked to contact you regarding Premier's longstanding concerns with your office's handling of various collection matters (the "matters") in which Premier succeeded to the interests of Bank of America, N.A. ("B. of A.").

As I understand your position, you have purported to continue to provide legal services to Premier regarding the matters, despite the following facts: Premier has never entered into an agreement for legal services with your office; Mr. Penzell passed away before Premier purchased title to the matters from B. of A.; and neither you, nor anyone else at your office, is an attorney. Nonetheless, you have represented that your office has some right of lien with respect to the matters, a position you have communicated to Premier to justify your retention of the matters. In any event, your office has performed no collection work of any significance in the matters since Premier succeeded B. of A.

This state of affairs is grossly unsatisfactory to Premier. Nick J. Maimonis of Premier has made this clear to you in numerous telephone, e-mail and facsimile messages over the past several months. Premier has attempted to address your retention of the matters in several ways. Premier has contacted you over and over again to obtain



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information on the status of the matters and to determine what collection activity, if any, your office can now perform in light of Mr. Penzell's death. Indeed, Premier sought your agreement to its specific instructions regarding collection strategy. These repeated contacts have been ignored: it has been virtually impossible even to obtain status information from your office. Obviously, absent such information, Premier cannot formulate a collection strategy going forward.

Finally, in April, 2003, Premier made a final attempt to create a working relationship with your office. Premier sent your office a draft agreement for collection work for your review. Please be advised that Premier has maintained, and continues to maintain, that there is no agreement currently in effect between your office and Premier respecting the matters; Premier is not a party to, nor bound by, whatever agreement Mr. Penzell may have had with B of A. In the draft agreement, therefore, Premier sought to establish a relationship with your office. You ignored the draft agreement. You also ignored Premier's repeated e-mail and other messages regarding the agreement.

Much time has passed as Premier has made these urgent, fruitless efforts to communicate with you. Substantial prejudice to Premier's interests in the matters can be presumed. (Absent status reports, however, the extent of such prejudice cannot be definitively established.) To prevent further damage to its interests, Premier must bring this damaging impasse with your office to a close.

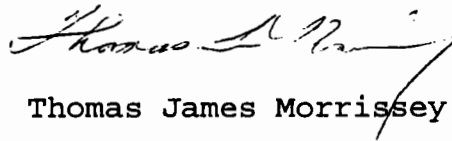
Accordingly, Premier demands that your office transfer to it forthwith any and all files in your custody or control on each and all of the matters. Such files should be returned directly to Mr. Maimonis at Premier's offices, 226 Lowell Street, Wilmington, MA 01887. Such files are to be returned on or before fifteen days from the date of this letter, or on or before June 20, 2003.

Your immediate attention to this matter is urgently requested. Please be advised that Premier reserves all of

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its rights and remedies, at law and in equity, with respect  
to the subject matter of this letter.

Very truly yours,



Thomas James Morrissey

cc: Paul W. George, Nick J. Maimonis, Premier Capital, Inc.